

AN EXACT
ABRIDGMENT
IN
ENGLISH,

Of the eleven Books of Reports of
the Learned Sir *Edward Coke*, Knight,
late Lord Chief Justice of *ENGLAND*,
and of the Councell of Estate to His
Majesty, King *JAMES*.

Composed by the Judicious Sir *Thomas
Ireland*, Knight, late of *Graves Inne*, and
an Ancient Reader of that Hono-
rable SOCIETIE.

VVherein is briefly contained the very
substance and marrow of all those Reports,
together with the resolutions on every CASE.

Also a perfect Table for the finding of
the Names of all those Cases, and the prin-
cipal matters therein contained. Very usefull for
all men, especially the Students and Practi-
sers of that Honorable Profession.

Brevitas Memoria Amica.

The Third Impression.

LONDON, Printed by *F. Leach*, for *Matthew
Walbanck*, at *Graves Inne Gate*, and *H. Tupper*
in *Vine-Court* in the *Middle Temple*.

THE DOCUMENT

OF THE

RECORDS OF THE

OFFICE OF THE

SECRETARY OF THE

WAR DEPARTMENT

FOR THE YEAR

1864

AND

FOR THE YEAR

1865

AND

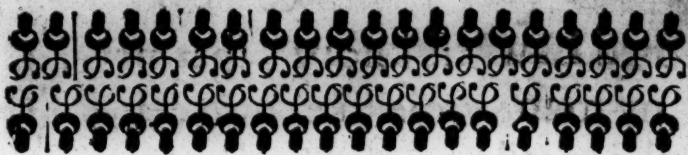
FOR THE YEAR

1866

AND

FOR THE YEAR

1867



To the READER.

Gentle Reader,



HE Abridger of these Reports was not only a Learned Lawyer, but also was very Conversant with the Author of them : For my part, I was only entreated by many Friends to view and correct the Copy from the Presse: If any faults be, you may blame the Printer. If I should commend the Originall work, I should disparage the Author, who all learned

To the Reader.

ned Lawyers know , that never any man wrote like him : and for the excellency of this Abridgement, it hath in it the very pith and substance of the Reports at large , and so I rest.

It is an abuse, that the Lawes and usages of the Realme, with their Causes, are not written, whereby they may be known, so that they may be understood of all. Mirrour Justice, fol. 225.



A Table



A Table of the C A S E S.

A Ebot of Strata
Marcella 334
Abergaveny
Lord. 269
Actions for

Slander. 101

Action. 166

Adams and Lambert. 164

Ayry Doctor. 417

Albany. 7

Alden. 229

Aldred. 342

Altham. 323

Alton-woods. 3

Ambrosia Gorge. 250

Anderson Lord 280

Appeales and Inditements.

135

Archer. 3

Archbishop of Canterburie.

31

Arundell. 245

Ascougb. 366

Ashpoole. 275

Auditor Curle. 412

Avornie. 333

B Agge. 438

Baker. 228

Bayneham. 193

Baldwynn. 23

Bane. 354

Bankrupts. 24

Barkham. 109

Barretry. 294

Barrington Sir Francis. 319

Bashpoole. 312

Baskerville. 283

Baten. 345

Beamont. 368

Beckwith. 36

Beecher. 299

Bedell. 287

Bedingfield. 332

Bellamy. 257

Bentham 429

Beresforde. 288

Barnwicke. 223

Bettisworth. 24

Beverley. 169

Bevill. 98

Bewfage. 398

A A

Bams

A Table of the Cases.

Rewly.	262	Bucknall.	338
Ribton.	139	Bullen.	269
Riggens.	199	Bullocke.	113
Ringham.	43	Bulwere.	373
Erechley.	155	Bunting.	123
Rishop.	193	Burrell.	267
Bishop of Bath.	256	Bury.	224
Bishop of Sarum.	379	Burton.	208
Bishop of Winchester.	29	Bustard.	268
Britridge.	110	Butler and Baker.	61
Blakeamore.	324	Butler and Goddale.	250
Blake.	258	Butts.	281
Blamfield.	217		
Bohun.	196		
Boifox.	71	C	
Booth.	213	Calie.	293
Rootbie.	255	Capell.	3
Boraston.	56	calvin.	271
Borough.	155	6 Carpenters.	321
Boswell.	260	Corporations.	157
Bowles.	434	Caterby.	264
Boxoun.	130	Caudrey.	237
Boulston.	228	Cecill Sir Thomas.	280
Bradshawe.	344	Chamberlein of London.	205
Brediman.	262		
Bredon.	4	Chandos Lord.	262
Broke.	135	chancellor of Oxon.	378
Broughton.	183	Chester Mille.	406
Browne Sir George	72	Cheiney Lord.	208
Browne.	111	Cheiney verdistt.	400
Brudenell.	173	cholmeley Sir Hugh.	33
Bruerton.	239	Chudleigh.	8
Buckley Sir Rich.	103	City of London.	316
Buckler.	34	Clere Sir Edward.	247
Buckhurst I ord.	I	clayton date.	71
Buckmere.	308	clayton usury.	208
		clerk	

A Table of the Cases.

Eller.	206
Elifton	211
Elunne.	402
Codwell.	196
Eolier.	246
Constable Sir Henry.	229
Constable Sir Henry Rates.	329
Cook.	197
Combe.	348
Coney.	351
Copyholders.	111
Cophdick.	53
Corbett.	5
Corbet Sir Andrew.	159
Corbet Sir Miles.	274
Coulter.	190
Countess of Bedford.	276
Countesse of Cumberland	327
Countesse of Devonshire	437
Countesse of Northumber-land.	224
Countesse of Pembroke	212
Countess of Rutland.	261
Countess of Rutland, (Of- fice)	298
Countess of Rutland, (uses)	185
Countesse of Salop.	339
Countesse of Rutland (vi: fa:)	196
Countess of Salop.	176
Crogate,	301

Cutler and Dixon.	102
Cromwell Lord.	40
Curyson Sir George.	268

D

D Arcey Lord.	266
D Dampport.	311
De la ware Lord.	411
Deane and Chapter of Nor- wich.	81
Deane and Chap: of wind- sor.	184
Deane and Chap. of Wor- cester.	257
Deale.	113
Denbawde.	396
Digby.	158
Digby Sir Everard.	327
Digges.	14
Discontinuance of Proces.	284
Docter Airay.	417
Doddington.	25
Dormer.	195
Doctor Bonham.	314
Doctor Drury.	320
Doctor Foster.	429
Doctor Grant.	416
Doctor Hussey.	347
Doctor Leifelde.	387
Dowdall.	259
Downam.	331
Downes.	124
Dowty,	

Drywood.

A Table of the Cases.

Drywood.	898
Drury Sir Drue.	267
Drury.	272
Dumpor.	167

E.

E Aton.	106
Ecclesiastical pers ^{ns}	177
Eden.	246
Edrich.	234
Elmor.	171
Englefield Sir Fran:	277

F

F Armer.	83
Ferrers.	242
Fines, Resolution upon them	89
Finch Sir Moile.	165
Finche.	375
Fine leyed by the K.	285
Fitch.	114
Fitz-Herbert.	214
Fitz-williams.	255
Fleetwood Sir Jer.	328
Floyer.	262
Folston.	128
Flower.	225
Foliambe.	233
Foord.	215
Forse.	149
Foster Sir VVilliam.	300
Foster.	203
Foxley.	230

Fox.	310
Frances.	309
Frankline.	198
French.	127
Freeman.	197
Frost.	210
Fulwood.	152

G

G Age.	197
Gardians of St. Sa.	381
Gardiner.	193
Garnons.	218
Gateward.	263
Gerard Sir Gilbert.	108
Goddard.	20
Godfrey.	425
Gooch.	434
Goodale.	224
Gore Agnes.	351
Gray.	214
Greene.	254
Greenelcy.	303
Gregory.	249
Griefley.	294.
Graucnor.	114

H

H Ales.	329
Hall (costs)	200
Hall (Qu: Impedit)	282
Halling.	182
Hargrave.	290
Harrison.	188
Harper.	

A Table of the Cases.

Harper. 418
Harris and Jay. 125

Herbert Sir William
Howard Sir Rowland. 26

Heydon. 54. & 136

Heydon Sir John. 413

Helliar. 251

Henstoe. 336

Henstead. 174

Herlakenden. 150

Hext. 104

Hickmote. 340

Higginbottom. 181

Higgins. 259

Hinde. 153

Hoe (Baile) 209

Hoe (assignment) 220

Hoe and Tailor 126

Holland. 156

Holt. 364

Hubbard. 121

Hudson. 138

Hungate. 227

Hume. 138

I

Jeffreys. 206

Jennings. 307

Jentleman. 244

Jeames. 176

Jewell. 172

Iste of Ely. 407

Ive. 174

Justice windham. 173

K

Kenne. 288

Keighley. 406

Kite. 117

Knight. 201

Knevet Sir Henry. 216

L

Lambe (Obligation) 183

Lambe (Starre Cham-

ber) 343

Lane. 22

Lampet. 75

Laughter. 182

Lechford Sir Rich. 312

Legate. 398

Libellis famosis. 236

Liford. 426

Lillingston. 287

Lincolne Colledge. 74

Littleton Gilbert. 198

Lofield. 337

Long. 235

Loveday. 301

Lovies. 384

Low. 365

Lutterel. 161

M

Mackally. 344

Magdalen Colledge.

432

Mayne

A Table of the Cases.

Mayne Sir Antho. 181
 Mayor and Bishop of Lynne.

N

401
 Mallory. 233
 Manning. 311
 Manser. 19
 Maryes. 358
 Markall. 240
 Market overt. 216
 Marquesse of winton. (Re-
 covery) 49
 Marquesse of winton,
 (VWill.) 251
 Marshalsea. 382
 Mathewson. 182
 Maunde. 284
 Mene. 365
 Melwich. 8
 Metcalfe. 423
 Michelborne. 249
 Middleton. 188
 Might. 326
 Milbourn. 276
 Mildmay Sir Anthony. 258
 Mildmay Sir Walter. 437
 Mitton. 129
 Mildmay. 16
 Motins Sir John. 241
 Murrell. 116
 Morice. 244
 Monopolies. 436
 Mount joy Lord. 172
 Mountague Viscount. 353

NEvill. 286
 Nevill Sir Henry. 417
 Neale. 120
 Needham Sir John. 318
 Nicholls. 196
 Noke. 159

O

OGnell. 143
 Oland. 233
 Orphanes. 210
 Osborne. 403
 Oxford. 108

P

PAckman. 248
 Page. 200
 Pagett. 212
 Paine. 293
 Palmer Sir Thomas. 184
 Palmer (gard) 237
 Palmer (Fr. fa.) 156
 Palmer and Thorpe. 111
 Pardons divers Cases. 198
 Pardons also. 244
 Peacocke. 346
 Peito. 349
 Pelham Sir William. 1
 Penal Statutes. 286
 Penant. 77
 Penrin. 217

Penrud-

A Table of the Cases

Penruddocke.]	226
Periman.	216
Petrifer.	190
Pexall Sir Richard.	307
Phiston Sir Edward.	269
Piggott (administ.)	189
Piggott (Obligation)	420
Pilfold.	399
Pilkington.	212
Pinchon.	352
Pinnell.	233
Playter.	192
Fodger.	356
Porter.	2
Portman Sir Hugh.	283
Portington.	374
Postnati. v. Calvins Case.	
Poulter Alexander.	214
The Poulterers Case.	342
Pridle.	414
Prince (Fitz. Roy)	291
Prince.	189

Q

Quicke. 363

R

R Atcliffe.	68
Rawlins.	145
Reade (Executor)	191
Reade (Traverse)	251
Read and Reaman.	404
Rector of Chedington.	12
Reynell Sir George.	355
Ridgeway,	73

Rivett.	114
Robinson.	191
Robberies and Cases there- of.	279
Rooke.	225
Rosewell.	280
Rosse.	175
Rouse.	116
Rowland.	199
Ruddocke.	252
Russell.	188

C Affin.

Affin.	230
Saint John.	209
Samon.	214
Savell.	429
Saunders.	179
Scronpe.	409
Semaine.	229
Seymor.	389
Sendill.	279
Sewers, and their Commis-	
sion.	406
Sbarpe.	252
Shawe.	126
Shelley.	6
Shipley.	318
Slade.	163
Slanders and actions.	101
Slingsby.	180
Smith.	405
Snelling.	219
Snagge.	106
Souldiers.	359
Sunday.	

A Table of the Cases.

Sunday.	363
Southcott.	160
Sparry.	205
Spectet.	202
Spencer (assignes)	177
Spencer (Journies)	243
Stanhope.	104
Stafford Lord.	305
Stiles.	181
Stoughter.	327
Stukeley.	106
Suttons Hospitall.	371
Swayne.	300
Swannes.	279
Syer.	138
Syms.	297

T

Tailors of Ipsich.	428
Talbott.	313
Tavernor.	120
Teye.	194
Thetford Schoole.	316
Thoroughgood	367
Thoroughgood lay-man.	135
Tiringham.	132
Tooker.	32
Thurson.	328
Treport.	246
Tresham.	357
Trollop.	302
Turnor.	317
Twyne.	16

V

V Angham.	199
Vaux.	139
Vernon.	95
Vinior.	307
Virgil Parben.	333
Wghtred.	276

W

W Ade.	232
W Waite.	142
W Valcot.	193
W Walker.	58
wardens of Sadlers.	148
walker (Indictment)	136
W Webb.	296
westoy.	89
W Whelpdale.	235
W Wheeler.	242
W Westwick.	122
W Weaver.	105
whi stler.	381
whitlock.	303
whittingham.	295
W Wild.	247
W Viat W Wild.	396
W Williams.	210
W Wetherel.	135
winnington.	37
W Wymarke.	210
W Windsor.	227
W Wrratt.	199

W Wye.

A Table of the Cales.

wiseman
Vroth;

21
140.

Y

2

Young (Indictment)
136

Z Anchor Lord.

318



THE

Y () X

+

+

ENT



THE FIRST BOOK.

The Lord Buckhurst's case, 40 El. fo. 1.



IF a man for him and his heirs, do warrant Land to one and his heirs; this is a general warranty, because there is not a restraint against any particular person in certain.

Upon a Feoffment, without warranty, the Feoffee shall have all the Charters, which comprize warranty, and others, though they be not given to him, because he is to defend the Title at his peril. Upon a Feoffment with warranty, without expresse grant, the Feoffee shall not have any Charters which serve for to detain the warranty paramount. Also the Feoffor shall have all Charters, which serve for maintenance of the Title; but the Feoffee shall have all which maintain the possession, as Court Rolls, and which are concomitant and incident to the possession.

If *A.* be seized of a Seigniorie, rent, advowson, or other thing that lyeth in grant, and grant the same over unto *B.* with warranty, and *B.* grant that to *C.* with warranty, In this case *C.* shall have the first deed, although *B.* be bound to warranty, for without that he cannot make any defence against *A.* or any claiming by him.

Pelham's Case 32 El. fo. 14.

A Tenant for life, the remainder in Tail, the remainder in fee, bargains and sells the Land to
*B*one

one, who before the Statute of 14 El. ca. 8. suffers a recovery, in which A. is vouched, and voucherh over, and he in remainder enters, and the entry is adjudged lawfull; for the Recovery is a Forfeiture, and the remainder may enter, for it is the common Assurance; As if Tenant for life had levied a Fine, &c. and suing of execution, doth not toll the entry of the remainder, and a Writ of error was sued, and the Plaintiff released the errors.

Porters Case, 35 El. fo. 22.

3^d **H.** 8. P. devised a house to his wife and her heirs, upon condition, that she by advise, &c. with all convenient speed, after his death, should assure it, &c. for maintenance of a free School, &c. for ever, and dies, 32 H. 8. the wife enters, and 3 E. 6. leases to A. for years, the heir of P. enters, and his entry adjudged lawfull; because 23 H. 8. extends not to good uses, nor doth it make the conveyance void, or give entry, but makes the use void: and admit the use void, yet the condition is not, for Counsel may devise, &c. as to have a corporation by Patent, and license to assure, and therefore the wife ought to have performed it.

Any man at this day may give Lands, Tenements, or hereditaments to any person or persons for the finding of a Preacher, maintenance of a School, maimed Souldiers, poor people, reparation of Churches, High-wayes, Bridges, marriage of poor maids, or any other charitable uses. But it is good policy in every such Feoffment or estate, to reserve to the Feoffer and his heirs any small rent, or to expresse some small sum of money for the consideration of the cause before recited.

Altonwoods Case, 42 El. fo 41.

H 8. seised of an estate Tail to him, and the heires males of his body, and of a Fee expectant; grants in Tail, and dies without issue male; adjudged that the grant is void; for the King had an estate Taile in possession, by which he might grant a lawfull estate for his own life, and a Fee, by which he might grant an estate Tail by special recital. And these words (*ex speciali gratia, &c.*) shall not produce a strainable construction against the rules of Law, or in *deceptionem regis*.

Capels Case, 23 Eliz. fo. 62.

A Tenant in Tail, the remainder to B. in Tail B. grants a rent charge, A. suffers a common recovery, and dies without issue, the grantee distraines, the Alience of A. brings a Replevin; adjudged for the Alience by all the Justices of *England* that a common recovery against a Tenant in Tail, shall bind not only the remainder, and all Leases, charges, &c. granted or made by him in remainder; but also the Reversion, and all Leases, charges, &c. granted by him in reversion.

Archers Case, 39, 40 Eliz. fo. 66.

L And was devised to the father for life, the remainder to the next heir male of the Father, and to the heirs male of his body; the deviser dies, the Father infeoffs J. S. with warranty. First it was resolved by *Anderson and walmesly, et tot. Cur.* that the Father had but only an estate for life, for that he had an expresse estate for life demised unto him,

B 2

and

and the remainder is limited to his next heir male in the singular number, and his right heir male may not enter for the forfeiture in his life, for he cannot be heir so long as he liveth. Secondly, it was resolved, that the remainder to his right heir is a good remainder, although he cannot have a right heir during his life, but it sufficeth that it vesteth *eo instanti*, that the particular estate determineth, *Dyer 14. Eliz. fo. 309.* Thirdly it was resolved, which was the principal point in this case, *per tot. Curiam*, that by the Feoffment of the Tenant for life, the remainder was destroyed, for every contingent remainder ought to vest, either during the particular estate, or at the least, *eo instanti* that the particular estate determineth; for if the particular estate be ended or determined in Deed or in Law before the contingency fall, the remainder is void. And in this case, by the Feoffment of the Father, his estate for life was determined by condition in Law, which cannot be revived by any possibility; for this cause the contingent remainder is void, for by the feoffment no right of the particular estate remaineth; and the better opinion was, that the warranty binds the remainder, though in a beyance.

Bredons Case, 39, 40. Eliz. fol. 76.

TENANT for life, and the remainder in tayl, joyn in a fine *Come ceo, &c.* to A. who renders a Rent charge of 40 l. a year, to Tenant for life, the remainder dyes without issue, the second remainder in tayl enters, Tenant for life distrains for the Rent, adjudged he may, and that the rent remains, after the death of Tenant in tayl without issue, during the life of Tenant for life; the fine was no discontinuance, for every one gave that which he might
law.

lawfully give, and 'tis no forfeiture by tenant for life, for the Law construes this, First, to be a grant of him in remainder, and after the grant of Tenant for life, *Ut res magis valeat, &c.* If Tenant for life, and the first remainder in tayl make a feoffment, 'tis no discontinuance, though the first remainder in tayl dies without issue, nor is it a forfeiture; but the feoffee shall hold it during the life of Tenant for life, but if it be without deed, then 'tis a surrender of Tenant for life, and the feoffment of the remainder, *Ut res magis valeat, &c.*

Corbets Case 42 Eliz. fol. 84. of Perpetuities.

C. Covenants to stand seis'd to the use of himself for life, and after to the use of A. his Eldest Son, and the heirs males of his body, the remainder to the use of B. his second son, and the heirs males of his body, &c. And if A. or his issue, &c. shall attempt, &c. to alien, &c. by which any estate shall be barred, &c. that after such attempt, and before any act executed the use and estate of him so attempting, &c. shall cease only as to him so attempting, in the same degree as if he were naturally dead, & not otherwise, and that then it shall be immediatly to such persons, to whom it should come by the intent of the Indenture, &c. C. dyes. A. suffers a recovery, B. enters, &c. adjudged he could not, for this proviso is repugnant, impossible, and against Law, for the death of Tenant in tayl, is not a cesser of the estate tayl, but death without issue males: And by this reason the issue should have it in the life of the Father, &c. And for every descent, &c. Death natural or civil, is requisite, and 'tis not material, though Tenant in tayl had no issue at the time of the breach, for 'twas repugnant at the beginning, and the estate tayl doth

not commence, by the having of issue, and a gift in tail upon condition, that if the Donee dies, his estate shall cease, is a void condition. Also the Proviso is void for the incertainty, as a gift to two, *Et hereditibus* is void though a Warranty be made to them, and their heirs, and in *Jermine* and *Ascotts Case*, the like proviso was adjudged void; for be the proviso a condition or a limitation, the inheritance ought to be defeated by it, and an Estate in Land cannot cease for part, and continue for the residue, nor cease for one person, and continue for another, nor cease for a time and revive after. The like judgement was betwixt *Chomly* and *Humble*, but the Parliament, or Law, may make an estate void, as to one, and good to another, as Tenant in special Tail, levies a fine, the issue is barred, not the wife, so a release by the demandant to the vouchee is good, not by a stranger, so, if an Executor surrender a term, to one respect 'tis extinct, to another 'tis assess, &c. And uses are within the Statute *De donis*, though it speaks only of Lands and Tenements, and there shall be a *Posseffio fratris*, &c. of them, for they are guided by the Rules of the common Law. *Richil* in the time of R. 2. and *Thurning* in the time of H. 4. Justices, intended to make a perpetuity, but could not.

Shellyes Case, 23 Eliz. fo. 94.

Edward Shelley leased for years, and after Covenanted to suffer a recovery, which should be to the use of himself, and after to the use of A. for 24 years, and after to the heirs males of the body of the said E. S. and the heirs males of the said heirs males, &c. E. S. dies 9 of Octob. the first day of the Term, in the morning betwixt five and six a clock, the recovery passes the same day, and an *Habeas facias*

as *seisinam* awarded, the recovery was executed the 29 of Octob. 4 Decemb. the wife of the eldest Son (before dead) of E. S. was delivered of a Son, named Henry, Richard, the second son of E. S. entered, and made a Lease, &c. Henry entred upon the Lessee, who brought an *Eject. firme*, and Judgement was given for the Defendant, and 'twas resolved, that if Tenant in tail suffer a Common recovery, and die before execution, that execution may be sued against the issue, for the intended recompence, in favour of the common assurance, resolved that the reversion in judgement of Law is not in the recoveror before execution sued, for the Judgement is, *Quod recuperet seisinam*, which cannot be executed till entry or claim, as 'tis of a Common, &c. granted upon condition; for when a man may enter, or claim, the Law will not put things in him, till entry or claim. The third and great point resolved, was, that the Uncle is in, as by descent, though he shall not have his age, nor be in ward. 1. Because the recovery being the Original act, had it Essence in the life of E. S. to which the execution hath retrospect. 2. Because the use might have vested in E. S. if he were in life. 3. Neither the recoverors by their entry, nor the Sheriff by making execution, may make an Inheritance to whom they please. 4. Because the Uncle claimed the use by the recovery and Indenture, and by words of limitation, not purchase.

Albanies Case, 28 Eliz. fo. 111.

A. By Indenture infeoffed B. of two Acres, to the use of A. for life, the remainder in tail to C. the remainder in fee to D. with a Proviso if E. die without issue, that A. at any time by Indenture sealed, &c.

in the presence of four, &c. may alter, &c. any use, &c. A. of the one Acre, infeoffes F. and for the other Acre, A. by Indenture renounces, surrenders, releases, &c. to B. C. and D. the said power, condition, authority, &c. E. dies without issue, A. by Indenture in presence of four, revokes the first uses, and limits new; resolved that by the feoffment, the power to revoke, as to limit new uses, was extinct, and by *Wray* Chief Justice, the future power may be released, as a condition subsequent, though the performance or breach cannot be done without an act precedent, but as to this point, the Court did not give their resolution; but the whole Court agreed, that if the power had been present, (as 'tis usuall) this might be extinct to any one, who hath a free hold in possession, reversion, or remainder. Twas moved (if the future power could not be released) whether it might be defeated by the words of defeasance, both being executory, and 'twas said that in all cases, when any thing executory is created by a deed, that the same thing, by consent of all parties to the creation, by their deed may be nullified, as a warranty, recognizance, rents, charge, annuities, covenant, &c. And of the same opinion was *Wray* ch. Justice, and the whole Court, and Iudgement given according.

Chudleighs Case, Or the Case of Perpetuities,

Fo. 120.

Sir Richard Chudleigh was seised in fee of the Manor of D. and had issue four sons, A. B. C. D. and 26. April. the third and fourth of Philip and Mary, infeoffed E. F. &c. in fee, to the use of himself, and his heirs of the body of G. then Wife of H. and after to the use of the performance of his Will,

Will, for ten years immediately after his death, and after to the use of the Feoffees, and their heirs, during the life of A. the Eldest Son, the remainder to the use of the first issue Male of the body of A. and the Heirs of the body of the first issue Male, and so to the second issue Male, the remainder to the use of B. the second Son, and the heirs of his body, the remainder to C. &c. the remainder to D. &c. the remainder to the right heirs of himself. Sir Richard Chudleigh dyed without issue of the body of G. 10 of the Queen, the feoffees (C. living) by Deed infeoffed A. in fee, without consideration, he having notice of the first uses. A. hath issue a Sonne, named S. and after I. and after infeoffes Sir I. C. with warranty, S. dyed without issue, &c. I. enters, &c. agreed by all the Iustices and Barons but two, that the feoffment made by the feoffees (which had an Estate for life) devests all the estates, and the future contingent uses also; and though A. had notice of the first use, 'tis not material, because the ancient uses were devested, and this new estate cannot be subject to the ancient uses, which rose out of the ancient estate, agreed that 27 H. 8. doth not extend to destroy uses, otherwise than by execution, and transferring the possession to them, agreed by the most, that 27 H. 8. doth not transerre the possession to any use, but only to uses *in esse*, which doth appear by the Statute, for there ought to be a person *in esse*, seised, and also a use *in esse*, for if there be only a possibility of a use, there cannot be an execution of the possession to the use, the Statute says, *That the estate shall be out of the feoffees, &c. that the estate shall be in such person which hath the use.* So that no Estate of the feoffees shall be transferred in obedience; and upon this was concluded that contingent uses, or in possibility, may be destroyed or discontinued, before

fore that they come *in esse*, as they might at common Law; so the remainders limited in use here, shall follow the rule and reason of Estates executed in possession by the common law, and if the estate for life here had been determined by death, before the birth of the Sonne, the remainder in future should be void, though the Sonne were born after, for a remainder ought to vest during the particular estate, or *eo instanti*, when it ends. And 'twas holden by all, that if the contingent use here, had come *in esse*, without alteration of the estate of the Land, it should be executed by the Statute of 27 H. 8. Also it was holden by most, that 27 H. 8. against the expresse Letter of it, shall not be taken by equity, because by preservation of contingent uses, mischiefs intended to be prevented, shall be preserved, and greater introduced. Popham chief Justice said, that by 27 H. 8. some uses *in esse* are executed presently, uses *in futuro* agreeable to Law, are executed if they come *in esse* in due time, but uses not agreeable to Law are extirpated, for the intention of the Statute, was, to restore the ancient common Law. Five other points adjudged, besides the principal matter. 1. When Tenant for life (the remainder being in tail to A.) entails the reversioner, 'tis a forfeiture, for it devests the estate in remainder; so if there be Tenant in tail, the remainder in tail, &c. and the diversity is, when the privity and estate is sole and immediate, when not. 2. If A. hath issue B. and C. infants, and a lease is made to A. for life, the remainder to B. in tayle, the remainder to C. in tayle. A. is disseised, and releases to the disseisor with warranty, and dies, this descends upon B. within age. B. dies, the warranty descends upon C. within age, C. comes to full age, and three years after enters, his entry is lawfull, for he might enter in the life of his Ancestor,

ffor, and if he doth not enter, yet the warranty shall not bind him, otherwise it is, when he is put to action, and *Caveat*, that after his full age, he doth not suffer a descent before entry. 3. If a disseisor, &c. who hath a defeasible title in a Mannor, grant a voluntary estate by Copy (being forfeited, or escheared to him) this grant shall not bind him that hath right; after a recontinuance of the Mannor; but admittances, which a disseisor, &c. makes to Copyholds are good, for they are in a manner judicial acts; and shall bind the disseisee. 4. That an estate made to one and his Heirs, during the life of B. is but an estate for life, upon which a remainder may depend. 5. That an estate made to A. and his heirs of the body of Jane S. is an estate tail, against the opinion of *Asough*. 20 H. 6. 36.

Anne Maiowes Case, 35. Eliz. fo. 146

FEEffor and Feoffee upon condition, by Deed joyne in a grant of a rent charge to C. the condition is broken, the Feoffor re-enters, the grantee distrains, the Feoffor brings a *Replevin*. Resolved, that the rent remains; to the objection, that 'tis the grant of the Feoffee, and the confirmation only of the Feoffor, and a confirmation cannot make a conditional estate absolute, nor alter the quality of it, except it enlarge it: as if a Feoffor confirme the estate of the Feoffee upon condition, before the condition broken, it doth not make it absolute. Answered, and agreed by the Court, that there is a diversity, when the estate of him, to whom the confirmation is made, is upon an expresse condition; there the confirmation doth not toll the condition; but if such a feoffee infeoff another without condition, there a confirmation to the second feoffee extincts the condition.

Feoffee

Feoffee upon condition grants a rent in fee; the lord confirms it to him and his heirs, and after enters for condition broken, yet the rent remains, and by *Littleton* every fee simple land may be charged one way or other, *Concurrentibus his, &c.* and the case 11 H. 7. is all one with our case, and here 'tis the stronger; because the grant and confirmation were by the same Deed, so that the rent was never subject to any condition.

The Rector of Chedingtons Case. 40 Eliz. fo. 153.

2 E. 6. the Rector of *Ched.* demised the Rectory to *El. Elderker* for fourscore years, if she should live so long; and if she dyed within the said term, or aliened, that then her estate should cease, and then by the same Indenture demises the premises to *R. E.* for so many years as shall remain unexpired after the death or alienation of *El.* for the residue of the term of fourscore years, if he shall live so long, without alienation, &c. And if he dye, or alien within the said term, then his estate shall cease; and then by the same Indenture he grants the premises to *W.* for so many years of the said term of fourscore years, as remain, if he lives without alienation, and if *W.* dies, or aliens within the said term, that his estate shall cease, and then he grants, &c. during so many of the fourscore years, which shall be unexpired to *T.* his executors and assigns, which Indenture, and estate, was confirmed by the Patron and Ordinary; the Rector dies, *T.* dies, *W.* dies and 17 *Eliz.* *Ellerker* dies, after *R.* enters, and dyes, 18 *Eliz.* the executor of *T.* enters, and assigns to *J. S.* the successor of the Rector enters, and leases to *B.* who upon ouster, brought an *Ej. firme.* Resolved for the Plaintiff, and that the Lease to *T.* is void. Argued for *T.* that his demise

demise was good, and a difference taken betwixt *terminum annorum*, and *tempus annorum*, as in this case of the demise to T. during so many years of the fourscore years, &c. not of the terme of fourscore years, if a Lease be made for 21 years, and after another Lease, to commence from the end and expiration of the said term of years, and after the first Lease is surrendered, the second term shall commence presently, not so, if it were from the end of the said 21 years. Resolved that the demises to R. and W. are void, because the terme that *El.* had was *sub modo*, if she should so long live, which is determined by her death, *ergo*, no residue can remain to R. and W. and so 'twas adjudged between *Green* and *Edwards*, and the Court agreed the diversity betwixt the demises to R. and W. and the demise to T. 'twas argued that the demise to T. was void. 1. Because that the Lessor had not power to contract for the Land during the fourscore years, for he had but a possibility to have the land again during the fourscore years, *viz.* if *El.* dyed, which possibility cannot be demised, but the Court delivered no opinion to this poynt. 2. That the Lease to T. was void, for the incertainty how many years should be behind, at the death of *El.* a termor grants to B. so many years as shall be behind *tempore mortis sue*, 'tis void. *Locrofts* case adjudged, a man possessed of a term of 90 years, upon marriage of his Son, demised the land to his Sonne for 70 years to commence after his death, the Lessor dyes, the Lease was adjudged good, because here he demised the land for 70 years, which is certain, in which this differs from 7. E. 6. which diversity was agreed by the whole Court. 2. That 'twas void because he dyed in the life of *El.* so that the incertainty cannot be reduced to a certainty in his life time, and so cannot rest in the executors, a lease to one for so many

many years, as his Executors shall name, is void. Note, a diversity betwixt a covenant and agreement, which is perfect, and certain, though it takes effect in possession, upon a future matter precedent; and a covenant and agreement incertain, which is to be reduced to a certainty by matter *ex post facto*, for in the first case, the estate is bound presently, in the other not, which was agreed by the Court. 4 It was moved, if T. had been in life, the demise could not rest in him; T. dyed before R. or W. and R. survived E. and by the expresse condition precedent, R. could not take, except E. dyed within the term, and W. could not take, except R. dyed within the terme, and this is as much as to say, that if R. dyes before E. and T. cannot take, except W. die in the life of E. and R. survived E. So that both precedent contingencies fail, *viz.* the death of R. and W. in the life of E. and though the demise to R. and W. are void, yet the limitation precedent (*viz.* the death of R. and W. in the life of E.) to the demise to T. is not void, for his interest may depend upon both the contingencies, for so was the intention of the parties, and this was affirmed by the whole Court, by Popham Chief Justice. The lease to T. was void for another cause, for it cannot commence upon a contingent, which depends upon another contingent, as here the demise to T. depends upon the contingent annexed to the demise made to W. and the demise to W. depends upon a contingency annexed to the demise to R.

Digges Case, 42. Eliz. fo. 173.

C. Digges was seised of the land in question, and other lands in fee, and by Indenture 6. Mar. 10. of the Queen covenanted (in consideration of marriage betwixt him, and his wife, and for the advancement

vancement of T. their Sonne, and for two hundred pounds paid to him before marriage) that he and his heirs would stand seised to the use of himself for life, and after to T. in Tail, and after to the use of himself in tail ; with a *proviso* (for the considerations aforesaid, &c.) that it should be lawfull for him , at any time during his life , with consent of certain persons , by Indenture to be Inrolled in any of the King Courts , to revoke any of the uses, or estates , and for to limit new uses. 6. *Maii*. 12 of the Queene, C. by consent , &c. by Indenture inrolled in the Chancery, revoked the uses and estates aforesaid, in part of the land, and limited the use of it to him and his heirs, after 20 *Sept*. 13 of the Queen, by Indenture with consent, &c. inrolled in Banck. *M*. 13. and 14 of the Queen, declared, that for the payment of his debts , that from the time of the inrollment of this Deed in Chancery, all the uses in the first Indenture should be void , and that the land should be to the use of himself in fee ; after C. 26 *Octob*. 14 of the Queen by Indenture covenanted for to levie a Fine of all his land, part of which should be to the use of himself and his wife, and his heirs ; which Fine was levied the same term , after the Indenture dated 20 *Sept*. was inrolled in Chancery , after C. enters, and makes his claim , and whether C. dyed seised in fee of the land mentioned in the Deed of Revocation of 20 *Sept*. was the Question. Adjudged, 1. that C. D. might revoke part at one time, part at another. till he had revoked all ; but he can revoke the same part but once, except that he hath a new power, &c. to uses newly limited , for these words (*at any time*) amount to (*from time to time*, &c.) 2. That where the revocation is to be by Deed indented to be inrolled, this is as much as to say, as by Deed indented and inrolled, and till inrolment no revocation shall be,

be, for otherwise perchance none shall be inrolled. 3. that was no perfect revocation by the Indenture of 20 Sept. till the Deed were inrolled in the Chancery: for though that the Proviso of revocation in the first Indenture shall be satisfied with an inrollment, in any of the Kings Courts, yet for that the Indenture of revocation it self, limits the revocation to take effect after the inrollment in Chancery, it ought to be so. 4. That the Fine levied before the inrollment in Chancery (which was before the revocation) hath extinct the power; see *Albanies* case before adjudg'd, and *Popham* Chief Justice said, that without question such a power might be released, for 'tis not meerly collateral, but favours and tastes of the estate of the land, which all the Court agreed. 5. If the fine had not been, the ancient uses were determined, without entry or claim, because he himself was tenant for life of the land, and the act of revocation is as strong as claim; and this point was agreed in the *Earl of Salops* Case. 6. by the same conveyance that the ancient uses are revoked, others may be raised, without claim, or other act, and the Law adjudges a priority of operation. *Whites* case adjudged according.

Mildmayes case, 24 Eliz. fo. 175.

A Use cannot be raised by any Covenant, proviso, or bargain, &c. upon a general consideration, and therefore if a man by Deed indented & inrolled, &c. for divers good causes & considerations, bargain and sell his land to another, and his heirs, *nihil operatur inde*, for no use shall be raised upon such general considerations, for it doth not appear to the Court, that the bargainor had *quid pro quo*. But the Bargainee may averre, that money or other valuable consideration

was

was paid or given, if in truth it was so, and the bargain and sale is good.

It was resolved, that when uses are raised by covenant in the consideration of advancement of any of his blood, and after in the same Indenture a Proviso that the Covenantor may make Leases for years, &c. that the Covenantor in this case may not make Leases for years to his son, daughter, or any of his blood; much lesse to any other person, because that the power to make Leases for years was void, when the Indenture was sealed and delivered. For the covenant upon this general consideration will not raise any use, and no particular averment in this case may be taken; but if the uses be limited upon a recovery, fine, or feoffment, there needeth not any consideration to raise any of the uses. Resolved, that the words (*other consideration*) cannot comprise any consideration expressed in the Indenture before the proviso, for (*other*) ought to be in quality, nature, and person, different, and advancement of his daughter is a consideration mentioned before.

Anthony Mildmay brought an action of the case against *Roger Standish*, for saying that Lands were lawfully assured to *John Talbot* for 1600 years, and that he was lawfully possessed of the said term; whereas in truth the said Lands were not lawfully assured for the said term, nor the said *John Talbot* was lawfully possessed of the interest thereof. And so for flandering of the title by speaking of the words, *Mildmay* brought an action. *Standish* justified the words, and shewed the title of *Talbot*, and it was adjudged that the action was maintainable and good, although that *Talbot* had a limitation of the Land by will, which was

C

the

the reason that *Standish* (being a man not learned in the Laws) affirmed the words ; yet because he took upon him the notice of the Law , and medled in a matter that did not concern him, Iudgement was given for *Mildmay* : *Et ignorantia Iuris non excusat.*

THE



THE SECOND BOOK.

Of Sir Edward Coke, Lord, &c.

Manfets Case, 26 Eliz. fo. 3.



IF a man be unlearned & cannot read, and be bound to do an act of sealing assurances, writings, &c. upon tender, &c. he is not bound to seal and deliver any such writing, if there be not some ready which may read the Deed if the party so require it, and in the same language and tongue that he understandeth. *Ignorantia duplex est, facti & juris*, & ignorance in reading, or of the language. *Que sunt ignorantia facti*, may excuse, but *ignorantia juris non excusat*, and if it be read unto him, he may not have a reasonable time to shew it to his Councell learned, to see whether it agree with his bond or Covenant, for he must seal it at his peril, or if the same be truly expounded to him, it is good enough. But if it read admisse, or declared contrary to what it is, and thereby the illiterate man is deceived, he may very well plead *non est factum*; For the Law saith, it is not his Deed; and so it was adjudged in *Thoroughgoods Case*, being the third case in this second Book. Resolved, that if a man be bound that a stranger shall do an act, in such case he takes upon him, that he shall do it at his peril; for he which is bound takes more upon him for a stranger, than for himself in many cases. If a man plead that he hath

kept a man indemnified, &c. he ought to shew how otherwise, where he pleads in the negative, *Non fuit damnificatus.*

Goddards Case, 26 Eliz. fo. 4.

AN Obligation dated the fourth of *April. An. 24* *El.* and delivered as the Deed of the party, *30 July, An. 23. El.* adjudged the deed of the party; for though the Plaintiff in pleading, cannot allege the delivery before the Date, because he is estopped, yet a Jury which are sworn to speak the truth, shall not be estopped. The Date of a Deed is not the substance of the Deed. For if it want date, or have an impossible Date, as the *30 February*, the Deed is good. For there are three things of the essence or substance of a Deed (*viz.*) writing in paper or parchment, sealing, and delivery. And if it have these three, although it want, *In cujus rei testimonium Sigillum suum apposuit, &c.* yet the Deed is good; and when a Deed is delivered, it takes effect by the delivery, not by the Date.

Tboroughgoods Case, 26. Eliz. fo. 9.

RESolved, that 'tis not material, whether the party to whom the Deed is made, or another by his procurement, or a Stranger of his own head, reads the writing in other words than the writing is, so that he that seals it, be a lay-man, and (without covin in him) deceived, and the pleading of it is always general, without shewing by whom 'twas read; and A. shall avoid an obligation to B. by pleading that he did it by menace of C. Resolved, that such a lay-man is not bound to deliver a Deed, if no body be present that can read it, in such language as he can understand,

Stand, and if it be read in other words, it shall not bind him, and 'tis at the perill of him to whom 'tis made, that the very effect and purport of it be declared, if it be required, but if he do not request it, he shall be bound by it, though it be made contrary to his meaning. Resolved, that it shall not bind, if the effect be declared in other words, then it is, as if the Deed had been read in other words. Two Justices, a Feoffment of two acres, is read as of one, it shall not bind: see *Mansers Case* before.

Wisemans Case, 27 *Elix.* fo. 15.

TENANT in tail of certain Lands, the remainder to another in Fee, he in remainder by Deed indentured and inrolled in consideration of bloud, &c. as for other good considerations, doth covenant to stand seized of the said Lands to the use of himself, and of the heirs males of his body. And for default thereof, to the use of the Queen, her heirs and successors. After the Tenant in tail in possession suffereth a common recovery with voucher. And whether it was a barr to the issue in tail was the question; And it was adjudged that the issue in tail was barred, for good considerations are too general to raise any use, without special averment, that valuable or other good consideration was given. Resolved, that the Land should continue in his name and bloud, is not a consideration to raise a use to the Queen, though the limitation to her, were, for the preservation of the Tail, against discontinuances and barrs, for there wants *quid pro quo*. Resolved, if he had said in consideration that the Queen is the head of the weale publique, and hath the care and charge, as well to preserve peace, as to repell hostility, yet 'tis no good consideration, for Kings *ex officio* ought to go-

vern their Subjects in tranquillity, which is implied in the word (King.) And admit the consideration hath been sufficient to raise a use to the Queen, yet that would not preserve the estate taile by force of the Act 34. H. 8. for no estate taile is preserved by the said Act, except the same estate taile be of the creation or provision of the King, and not where the estate taile is given or created of a common person without provision of the King, as may appear by the preamble of the Act. Resolved, that before the Statute of 34. H. 8. a common recovery barred a taile created by the King.

Lanes Case, 29 Eliz. fo. 16.

THE Queen seised of a Mannor in right of her Crown, by her Steward granted copy-hold lands, parcel thereof, to one by Coppy, according to the custome in fee. And after the Queen under the Exchequer Seal made a Lease of the same Lands to another for 21 years, who granted the same Term to the Coppy-holder, and after the Queen reciting the Lease for years, granted the Reversion thereof in Fee, the term of 21. years expired. The Patentee of the reversion entred upon the coppy-holder, and the entrie was adjudged good. Resolved, that the Lease under the Exchequer Seal was good, by the usage there, for the course of every Court, is as a Law, of which the common Law takes notice, without alleging of it in pleading; and every Court at *Westminster* is bound to take notice of the Customes of other Courts, otherwise of Courts in the Countrey; and the order of Exchequer is to make Leases by (*committimus* such land.) Resolved, that the Estate of the Coppy-holder was determined by the acceptance of the Lease for years; and so it was adjudged

adjudged against the Copy-holder, not notwithstanding that the Copy-holders estate is taken to be but an estate at will, yet the custome hath so established the estate of the Copy-holder, that he is not removeable at the will of the Lord, so long as he performs his customs and services: and by the same reason the Lord cannot determine his interest, by any act that he can do. And so it hath been adjudged many times. And the acceptance of this Lease was the proper act of the Copy-holder. Resolved, that by the severance of the free-hold from the Mannor, the Copy-hold estate is not extinguished.

Baldwyns Case, 31 Eliz. fo. 23.

THings which lie in grant, and take the essence and effect by delivery of a Deed, without other ceremony, as rent or common out of Lands, &c. by the premises of the Deed to one and his heirs, *habendum* to the grantee for years, or life, this *habendum* is repugnant to the premises, for the Fee passeth by the premises by the delivery of the Deed, and therefore the *habendum* is void. And when a man giveth Lands by Deed in Fee by the premises, *habendum* to the Lessee for life, there the *habendum* is void, and when livery is made, the effect of the Deed shall be taken the most strongly against the Feoffor, and the best for the Feoffee.

When a ceremony is requisite to the perfection of an estate in the premises limited, and to the estate limited in the *habendum*, no ceremony is requisite but only the delivery of the Deed, although the *habendum* be of meaner estate than the premises, the *habendum* shall stand good and qualifie the generality of the premises, as a Fee granted in the premises, *habendum* for years, it is for years, and no inheritance.

itancee. Note, There is a diversity betwixt the estate implied in the premisses, and expressed; as if A. grant a rent to B. this is an estate for life, but if the *habendum* be for years, this is good, and qualifies the implication of the premisses.

Case of Bankrupts, 31 Eliz. fo. 23.

Resolved, that a grant or assignment of goods, by a Bankrupt after the Commission awarded, which is matter of Record, of which every one ought to take notice, and though to a Creditor, in satisfaction of his debt, is void, and that a sale of such goods, by the Commissioners, is good. Which sale by the Statute of 13 of the Queen, ought to be equal, to every one rate, and rate like, according to the quantity, &c. And the Court resolved that the proviso in the said Statute, concerning gifts *bona fide*, doth not make any gift good, but excludes them out of the penalty, &c. Commissioners may sell, by Deed, without inrolment, and though they have not seen the goods, agreed, that the distribution ought to be several, not joynt, for the one debt may be greater than the other, and in this case the Jury found, that the Commissioners sold the goods to three Creditors joyntly, but further, that the Bankrupt was indebted to them in 273 pounds, which shall be intended a joynt debt, and so good. Resolved that the act giveth benefit to such as will come, and not to them that refuse; & *vigilantibus, & non dormientibus, jura subveniunt*; and every Creditor may take notice of the Commission, being matter of Record.

Beddisworths Case, 33 Eliz. in Communi Banco, fo. 31.

A Lease for years was made of one Messuage, one Close called *Raynolds*, and of divers other Lands in

in Dale, and afterwards (the Lessee being in the house) the Lessor entred into the same Close, and maketh a Feoffment of the Messuage, and of the Lands therewith demised, and maketh livery in the same Close, and afterwards the Lessee reentreth into the said Close. And if this was a good Feoffment, and livery of seison of the said Close, (the Lessee nor any for him being in the said Close) was the question. And it was adjudged that the livery and seison was voyd, as well for the Close as for the Messuages, and the other Land therewith demised; For the Possession of the Messuage, which is his Castle, is a good possession of the Lands therewith demised, and it matters not, whether livery be made on the Land within view of the house, or not, When a man maketh a feoffment of a Messuage *cum pertinentiis*, he departeth with nothing thereby, but that which is parcell of the house, as buildings, curtelage, and gardens.

If a Lessee for years makes a Lease for a certain Term of any parcell, and so divides the Possession thereof from the residue (if of this parcell so severed) Livery be made, the possession in the residue by the first Lessee, is not any impediment to the livery of this parcell, otherwise if a Lessee make a Lease at will of any parcell, there his possession of the residue shall hinder the Livery made in this parcell, and with this judgement agreed all the other Justices, and Serjeants of Serjeants Inne in Fleetstreet.

Doddingtons Case, 27. Eliz. fo. 32.

King H. 8. *Ex certa scientia, &c.* granted to A. for
300l. *Omnia illa Messuagia in tenura Johannis Brown*
Situate in wells, nuper Prioratini de W. Spectant.
And

And in truth the Lands lye in D. in this Case 'twas resolved that the Grant was void by the Common-Law, as well in case of a common Person, as the King, because the grant is general, and is restrained to one certain Village, and the Grantee shall not have any Lands out of that Village, to which the generality of the Grant is referred, for this Pronoun *Illa*, hath his necessary reference as well to the Town, as well as to the tenure of I. B. for if either the one or the other fail, the Grant is void. And so it was adjudged, *Per tot. cur. de Banco Regis*. Resolved also, that this Grant was not holpen by the Statute of 34. H. 8. For no grants are holpen by this Statute, nor by any Act of confirmation, but such as comprehend convenient certainty. *I. Quia generale nihil certum implicat*. And here no Tenements are mentioned to be granted, because the general Grant being in-ire, was referred to a falsity, and therefore it cannot be said that the Town was mis-named, and great inconvenience would follow, if, &c. for the King should be deceived, but the Statute helps when there is convenient certainty, as a Mannor, Farm, Land, known by a certain name, or containing so many acres, &c. So that it may appear what things the King intended to pass. *Note*, tis the most sure way, for the Patentee to express as much as he can in certainty, before the generall words.

Sir Rowland Heyward's Case, In *cur. wardor*. 37. *Elix. fo. 35.*

Sir Rowland Heyward leased of a Mannor in De-means and rents, in consideration of money, doth demise, grant, bargain, and sell to A. the said Mannors, Lands, Tenements, and the reversions and

and remainders, with all rents reserved upon any demise, to have and to hold to A. and his assigns after the death of the Lessor for seaventeen years, rendering a Rose, the Indenture was inrolled, and after the Lessor by Indenture doth Covenant with B. to stand seised of the premises, to the use of himself and the Heirs of his body, and no attornment was made to A. The Question was, what passed to A? and it was resolved by Popham and Anderson chief Justices, and the Court, that A. may have his election, either to take the same by demise, at the common Law, or by bargain and sale, *Per Statutum* 27. H. 8. without attornment, for it was one entire demise, and bargain of one Mannor without any fraction or division thereof, and this election remaineth to A. and his Executors and Assigns, for here is not election, to claim one of two severall things by one Title, but to claim one thing by one of the two severall Titles, for where the things are severall, nothing passeth before Election, and the Election must precede; but when one thing passeth, the Election of the Title may be sublequent. For if I. have three Horses, and do give to you one of them, the property commenceth by Election, and must be made in the life of the Parties.

The Bi: of Sarum had a great wood of 1000 Acres, called *Berewood*, and infeoffed another of one House, and seaventeen Acres, parcell of the Wood, and made liverie in the Wood House; nothing passeth of the Wood before Election, and the Heir of the seoffee may not make Election. *Bullocks Case* 10. Eliz. Dy-
er.

In case where election is given of two severall things, he which is the primer Agent, and that ought to do the first act, shall have alwaies the Election. As if

a man grant a rent of twenty shillings, or a Robe, the Grantor shall have the Election, for he is the primer Agent, either by paying the one, or delivering the other. If a man make a Leale rendring twenty shillings or a Robe, the Lessee shall have the Election, *Causa qua supra*; but if I give unto you one of my Horses in my Stable, there you shall have the Election, for you are the primer Agent, by taking or seising one of them, and so of twenty trees in my Wood. Note for elections these diversities. 1. When nothing passes to the Grantee, &c. before the Election, there it ought to be made, in the life of the parties, but when the Estate passes presently, &c. the Grantee, &c. his Heir or Executor may elect. 2. When the same thing passes and the Donee, &c. hath election, in what manner, &c. he will take it, the Donee, Heir, or Executor may elect. 3. When Election is given to several persons, the first shall stand. 4. When Election is given of two several things, he which ought to do the first Act, shall have Election. 5. When the thing granted is annuall, and to have continuance, there the Election remains to the Grantor (in case, where the Law gives him Election) as well after the day as before, otherwise tis when the thing is to be performed, *Unica vice*. 6. The Feoffee, &c. by his act may forfeit his Election; as if A. infeoff B. of two Acres, *Habendum*, the one for Life, the other in Tail, and he before Election makes a Feoffment of both; here the Feoffor shall enter in which he pleases, for the wrong of the feoffee. 7. Though the Lessees here enter generally, yet they may elect after; so, if one be Executor, and Devisee of a term, and enters generally, &c. and after the Lessees, in the principal case, made Election, for to take by bargain and Sale, and had the Rents.

The Bishop of Winchester's Case, 38 El. 10. 43.
In a prohibition.

Resolved, that at common Law, none had capacity to take Tithes but spiritual persons, or *Persona mixta*, as the King, and regularly no meer Lay-man was capable of them (except in special Cases) for he could not sue for them in Court Christian, and regularly, a Lay-man had no remedy for them, till 32 H. 8. A Lay-man may be discharged of Tithes, at the common Law, by grant, or by composition, but not by prescription, for it is commonly said in our Law-books, that a lay-man may prescribe, *In modo decimandi*, but not *In non decimando*: And the reason is, because he is not (except in special Cases) capable of Tithes at the Common Law, before the Statute of 32 H. 8. cap. 7. And therefore without special matter shewing, it shall not be intended that he hath any lawfull discharge, and in favour of the Holy Church (although it may have a lawfull commencement) the Law will not suffer this prescription *In non decimando*, to put it to the tryal of Lay-men, which sooner will strain their conscience for their private benefit, than render to the Church the duty which belongeth to it.

A spiritual person that was capable of Tithes at the common Law in perrancy may prescribe to be discharged of Tithes generally, or to have a portion of Tithes in the Land of another.

Before the Counsell of *Lateran*, every man might give his Tithes to any spiritual person that he would, and if the Lands of the Bishop were discharged in his hands absolutely by prescription, the demising it to a Lay-man cannot make it chargeable, and the Bishop might reserve the greater Rent.

And

And in discharge of Tithes, the Iudges of our Law do know, that the Ecclesiastical Iudges will not allow any such allegation, and therefore a Traverse, *Absq; hoc quod Iudices placitum, &c. recusarunt* is insufficient, for the refusal is not material, for the party might have a prohibition before any plea pleaded by him, but in some Case, the refusal is traversable, as 'twas adjudged in *Morris & Eatons Case*, where 'twas pleaded that the Plaintiff did not read the Articles, &c. and that the Ecclesiastical Iudge refused this Plea; But the truth is, a man may prescribe that he and all others whose estate he hath in the Mannor of D. time out of remembrance, have paid to the Parson of C. for the time being, one certain pension yearly, for the maintenance of Divine service there, in contentation of all Tithes, renewing, or happening within the same Mannor, and prescribe in respect of the pension paid, &c. to have all the Tithes within, &c. and this was adjudged good in *Banco Regis, Mich. 39. & 40 El. Rotulo 199*. And that a lay person may sue for the Tithes, &c. for at the beginning it shall be intended, that the Lord was seised of the whole Mannor, before any Tenancy was derived out of the same, and then by composition or other lawfull means, the Lord had all the Tithes within the Mannor, for the said Pension paying to the Parson, and the Law intends it was for Divine service, *Et pro bono Ecclesie*, the reason of which intendment is the continual usage, time out of remembrance. And upon such special matter, a man might have Tithes, as appurtenant to a Mannor, for he prescribes to a *Que estate* in the Mannor, and therefore cannot have them in grosse; but 'twas adjudged in *Wyncombs Case* in a prohibition, that a man cannot prescribe generally in him, and all those, &c. to have Tithes appurtenant to a Mannor, without special

man

Lib. 2. *The Archbishop of Canterburies Case.* 31
matter shewn, because Tithes are due *Iure Divino*.

*The Arch-bishop of Canterburies Case, 38 of the
Queen, fo. 46.*

A Religious house in M. was given to E. 6. by the Statute of 1 E. 6. a Rectory which was impropriated to it, was granted to the Archbishop of Canterbury, who leased to the Defendant, and Land within M. parcel of the said College, came to the Lord Cobham, and from him to the Plaintiff, who shewes, that the Master of the College was seised of the said Land and Rectory, *Simul & semel*, as well at the making of 31 H. 8. as of 1 E. 6. Resolved that this College came to the King by 1 E. 6. only, for when 31 H. 8. speaks of dissolution, renouncing, relinquishing, forfeiture, giving up (which are inferior means by which, &c.) or by any other means, cannot be intended of an act of Parliament, which is the highest manner of conveyance that can be, and the makers would have placed this in the beginning, if they had intended it. Bishops are not included within 13 of the Queen, which begins with Colleges, Deanes, and Chapters, &c. Also 1 E. 6. Enacts, that all Colleges by this Parliament shall be in actual possession of the King, which last act being of as high nature, as the first, it cannot come to the King by 31 H. 8. and it was never pleaded, that of Colleges which came by 1 E. 6. the King was seised *Vigore* of the Statute of 31 H. 8. Resolved, that neither the Act, nor the meaning of 31 H. 8. extends to other Colleges than to those, which came to the King by 31 H. 8. for it should be absurd, that a branch of the Act of 31 H. 8. should extend to a future act, of which the makers of 31 without a spirit of prophecy could not have foreknowledge: and the Act

of 31. concludes in as large manner as the late Abbots, &c. which late, as it hath been agreed, extends only to those to be dissolved by 31. Resolved, (admitting that the College had come to the King by 31 H. 8.) that such a general allegation of unity of possession of the Rectory, and the Land with it, was not sufficient, for no unity shall be sufficient, but lawfull and perpetual unity of possession, time out of mind, as 'twas adjudged in *Knightly* and *Spencers* case; and that the general allegation of the Plaintiff, that the Master of the College at the making of 1. E. 6. held the Land discharged, is not good, without shewing how, either by prescription, composition, or other lawfull means, as 'tis adjudged in the Bishop of *Winchesters* case; otherwise if the Land had come by 31. then by force of the said branch of discharge, such general allegation had been good. Resolved, that no Ecclesiastical house, except religious, was within the Statute of 31 H. 8. Resolved, that though 1 E. 6. saith, that the King shall have the lands of Colleges in as ample and large manner as the said Priests, &c. enjoyed the same: yet these general words doe not discharge the land of any tithes, for they do not issue out of the land; for a Prior had Tithes against his own Feoffment of the Mannor, and 'tis no good cause of prohibition, to allege unity of possession in a College which came to the King by 1 E. 6. as 'tis upon 31 H. 8. in Abbeyes, &c. For the Statute of 1 E. 6. hath no such clause of discharge of payment of Tithes as 31 hath, and therefore such perpetual unity will not serve upon 1 E. 6. So 'twas likewise resolved between *Green* and *Buffkin*.

Sir Hugh Cholmleys Case, 39 of the Queen, fo.

Enant in Tayl, the remainder in Tayl, the re-
 mainder begins and sells the Land, and all his
 estate so J. S. to have for the life of Tenant in Tayl,
 the remainder to the Queen, &c. upon condition
 that the estate shall be void upon render of so. l.
 Tenant in Tayl suffers a Recovery, to the use of
 himself and his heirs after the remainder renders the
 ten pounds. &c. &c. resolved, the remainder to the
 Queen was void. Because the grantee for life of
 tenant in Tayl, took nothing, for 'tis a void grant,
 for the grantee shall never have any benefit by it,
 but such a grant of a reversion were good, for he shall
 have the services; but a Lease for life of J. S. the re-
 mainder to J. H. for life of J. S. is good, for this may
 take effect, by forfeiture of Tenant for life; and re-
 mainder *dictum, quasi terra remansens*, which cannot
 be here, and the remainder must take effect when the
 particular estate ends, *et vana est illa potentia, quae nun-*
quam venit in actum. And the possibility for Tenant in
 Tayl to enter in Religion, shall not make the remain-
 der good, because 'tis remote, and it ought to be a
 reason *et propinqua possibilitas*, which shall make the
 remainder good, as death, coverture, dying without
 issue, remainder to a Corporation, which is not in
 esse, is void, though such be erected during the par-
 ticular estate. 2. Because the Law will never adjudge
 grant good, by reason of such a forrem possibility,
 or 'tis *potentia remotissima et vana*, and by intendment
anquam venit in actum. 3. Because the remainder be-
 ing Tenant in Tayl, granted all his estate for the life
 of Tenant in Tayl, so that there is no remainder left in
 the grantor, but in such case the estate Tayl is in
 reversion, *Blishmans Case*, 35 of the Queen agreed,

tenant in tail covenants to stand seised to the use of himself for life, and after to his eldest Sonne in tail, the remainder to the Son is void; for when he has limited the use to himself for his own life, 'twas as much as he could limit by Law. Resolved, (admitting the remainder good to the Queen) that the common Recovery hath barred the estate of the first grantee, and so the condition during his life; for out of the Statute of 34 H. 8. being not of the gift of the Queen, &c. as *wisemans Case* is before adjudged. A reversioner upon an estate tail, grants upon condition, a Recovery bars the reversion, and condition, and as *Capels case* is before adjudged, if the reversioner, or he in remainder grant a Lease, &c. and tenant in tail suffer a recovery, the possession shall never be subject to such charges. Resolved, that the payment to the first grantee, cannot devest the remainder out of the Queen. 1. Because the condition during the life of the first grantee, was discharged. 2. Because, he that takes benefit of a condition ought to have the entire estate, with which he parted, which cannot be here, for the estate of the first grantee, was barred by the recovery. 3. The term to the first grantee, was to the intent, for to revest the estate, which cannot be, because 'twas barred, and therefore the payment cannot devest the remainder out of the Queen.

Buckleys Case, 40 Eliz. in Communi Banc.

fo. 55.

TENANT for life, the remainder in Fee, tenant for life maketh a Lease for four years in *March*, 20 and the Lessee entreteth, tenant for life granteth the rements aforesaid to C. to hold from the Feast of *St. John Baptist* next ensuing for life, after the said Fe

the tenant for years attorns, the years expire, C. enters and maketh a Lease at will to D. to whom the tenant for life levyeth a Fine, he in remainder in Fee entreteth and maketh a Lease to Buckler, the tenant at will entreteth upon him, and Buckler the Plaintiff bringeth an *Ejectione firme*, and judgement was given for the Plaintiff. In this case divers things were resolved, First that the grant of C. was void, for the Law maketh construction upon the whole grant, and an estate of Free-hold may not commence *in futuro*. The office of the premises of a Writing (*viz*) Forfeiture, Lease, &c. is to expresse the grantor, the grantee, and the thing granted. And the office of the *habendum* is to limit the estate; so that the general implication of the estate, which should passe by the premises is always controlled and qualified by the *habendum*, as a Lease or two, *habendum* to the one for life, the remainder to the other for life, here the general implication of JoynTENANCY is altered, and the *habendum* is not contrary to the premises, for the premises no certain estate is passed, and the grant being void at the beginning, the attornment at Midsummer, shall not make the reversion to the fee. For *quod ab initio non valet, tractu temporis non valet*.

Resolved, that when the grantee entered, by colour of this void grant, he was a disseisor, but when the grant is good at commencement, but is to have perfection by an act subsequent, as livery, or attornment, and the grantee enters before the perfection, &c. he is not a disseisor, but a tenant at will. And if the fine had been levied to the disseisor, come, &c. He which had the right of the remainder, might enter for a forfeiture, or a right of a particular estate may be forfeited, and entry given to him, who

D 1 hath

hath but a right. Resolved, the Fine being levied
 tenant at will, 'tis a forfeiture, and he which hath
 right of the remainder may enter, and the tenant
 life, and at will, shall be estopped to say, *quod pars*
Finis nihil habuerunt, and of such estoppells, which
 by master of Record, and trench to the disin-
 heritance of those in reversion, &c. they shall take
 advantage, though strangers to the Record (for they
 are privies in estate.) A disseisor levieth a Fine on
 a stranger, the disseisor shall hold the Land in this
 for ever, for the disseisor against his own Fine
 may not claim the Lands, and the donee may not enter
 for the right which the donor had may not be trans-
 ferred to him, but by the Fine the right is extinct
 whereof the disseisor may take advantage.

Beckwithes Case, 27 Eliz. fo. 59.

IF the husband and the wife levie a fine of Land
 whereof they are seised in right of the wife,
 the husband solely declare the use of the fine,
 declaration shall bind the wife, if her dissent do
 appear, although her assent to the limitation of
 uses doe not appear, for it shall be intended (if
 contrary doe not appear) that she joyned
 him also in the declaration of the uses of the
 But if the Husband declare one use, and the
 another use, they are both void: the declaration of
 use, insues the ownership of the Land; for the
 (viz.) the wife is not *sui juris*, sed *sub potestate*
 and hath the estate of the Land, and the husband
sui juris, and hath not the estate; and if a fine be
 reversed by nonage of the wife, all the estate shall
 restored to the Wife presently: for all the estate
 sed from her by the fine, and so it was adjudged
regis, in *worselys Case*,

Resolved

Resolved, that though the variance of the limitation, be onely in one estate, and they agree in all the other, yet all is void. But if two joint tenants, or two having severall Estates, vary, 'tis good, for every of their parts, and shall be directed by their interest; but if the variance had been in limitation of part of the Land, and they had agreed in the use, it should be void for that part, and good for the residue.

Note, That though the husband might dispose of the Land during coverture, yet, for the cause aforesaid, his declaration was void.

If A. tenant for life, and B. in reversion or remainder, both levy a fine together, generally the use shall be to A. for life, the reversion or remainder to B. in fee, for either of them grants that which lawfully he may grant; and either of them shall have the use, which the Law vesteth in them, according to the estate, which they would convey over.

Winningtons Case, 40. of the Queen. fo. 19.

VV Intossed B. upon condition, to give to the Feoffor for life, the remainders to J. Sonne and Heir of the Feoffor, the Feoffor enters, and takes the profits, without agreement, or contradiction of the Feoffee, and Leases to D. for 21 years, and yet continues possession, the Feoffee acknowledges a statute to J. the Feoffor makes a Feoffment, to the use of himself for life, the remainder to his second Sonne a tail, &c. and dyes, the Feoffee enters, and intosses the Sonne and heir, upon which the second Sonne enters, &c. Resolved, that though the intention was, that the Feoffee should make an estate to him for his life, when he hath entered without agreement, of the Feoffee, 'tis a disseisin, and the rather, because the owner of the Land, he took upon him to make a

Lease for years. Resolved, that by the Lease by Indenture, he hath dispensed with the condition, during the term. Resolved, that when the Feoffor disseises the Feoffee upon condition, and the Feoffee acknowledges Statute, &c. This is no disability, to cause the Feoffor to enter, for the Right of the Feoffee, is not subject to the Statute; but when the Feoffee in possession takes a wife, grants a Rent, or acknowledges Statute, the land is presently subject, &c. And though upon entry he may be disabled; yet till then he is not, because the wife may dye, or the Statute be released, and then he may enter, and perform the condition; and the Feoffor by his Feoffment hath excused the Condition; so that the Feoffee may enter, and when he hath inclosed the eldest Sonne, he hath done well.

Westcotts case in Communi Banco. 41. El. fo. 63.

IF a man make an estate to three, and to the heirs of one of them; one of them in this Case hath the Fee simple, and yet the joint Estate continues, for it is one estate, created at one time, and therefore the Fee simple cannot drown the jointure, which taketh effect with creation of the remainder in fee; but when three jointenants are for life, and after one of them purchase the Fee, or else the Fee descends to him, there the Fee simple doth drown the estate for life, for the estate was in esse before.

Note; By this resolution, if tenant for life grant his estate to him in the reversion, and a stranger, 'tis a surrender for the moiety; and the benefit of survivor is not regarded; so the doubt in 7 H. 6. well resolved. Resolved, upon view of three presidents, that Judgment should be given for the Plaintiff, upon a demise made by husband and wife, without alleging to be by Deed.

Tookem

Tookers Case, 43 Eliz. fo. 66.

John Arundel seised of Lands in Fee, maketh a Lease thereof to A. and B. for their lives, and after grants the reversion to C. for his life, to which grant A. doth attorn being joyn tenant with B. and after A. by his Deed doth surrender to C. all his estate, title, and interest, &c. and then dyeth, C. entereth claiming to hold in common with B. and whether his entry was lawfull, or no, was the question, and judgement was given, that it was lawfull, for the attornment of the one tenant for life, shall vest the entire reversion in the grantee, because the estate of the joynnt Lessees is intire, and every joynntenant is seised *per my, & pro tout*, and by consequence the reversion, which is dependent and expectant upon this estate is entire also, and the attornment of the one joynntenant is the attornment of both. Attornment is a lawfull act: if one joynntenant assigne Dower, tis good. Also, the attourment passes no interest from him that attournes, but perfects the grant of another. And if one joynntenant gives seisure of rent that shall bind the other, but in a *quid jura clamat*, or *quem redditum reddit*, or *per que servitia*, one joynntenant shall not be permitted to attorn without his companion, for doing of prejudice to his companion: By *Polham* one joynntenant may prejudice another in the personalty, but not in the realty; if one take all the profits, or release a personal action, the other hath no remedy, because of the privacy and trust between them, and the folly imputed to him, to joyn with such a companion.

Note, if a tenant have notice of the grant by a stranger, and doe give his assent thereunto, it is a good attornment, although he be in the absence of the

grantee

grantee, but disagreement ought to be to the party himself, or do attorn for any part, It is good for the whole, for the intent of an attornment is but wholly an assent to perfect the grant of another, and the which attorns cannot apportion, divide, or alter the grant.

Lord Cromwells Case, 40 of the Queen. fo. 70.

Blant bargained, &c. the Mannor of Alexton, to which the Advowson of A. was appendant, by Indenture, to have, as after in the same Indenture mentioned, and B. covenanted to suffer a common Recovery, to the use of Andrews and his heirs, rendering 42 pounds per annum, to B. and his heirs, with *in nomine pene*. And further, 'twas covenanted, and agreed, as well, for the assurance of the Mannor, to A. as of the rent to B. that B. should levy a Fine, &c. to A. and his heirs, and A. by the same Fine, should tender a rent of 42. pounds per annum, &c. Provide also, that A. by Deed, should give the Advowson, &c. to B. during his life, and if it did not become void, during his life, one turn to his Executors, &c. And further, 'twas covenanted and agreed, that all assurances afterwards to be made, should be to the use of this Indenture, &c. after a recovery was had, and after B. and A. levye a Fine to Perkins, and he renders a Rent of 42 pounds to B. and the Mannor with the Advowson to A. A. dyes without granting the Advowson, and B. did not request it, B. entered for Condition broken, & by Indenture inrolled, bargained, &c. to the Lord Cromwells, by which he entered, and upon the re-entry of the Sonne and heir of A. brought an Affize.

In this Case is shewed when this word (proviso or (provided)) maketh a condition, and when not.

which upon long debate was adjudged by all the Judges of England.

It was adjudged that the Law hath not appointed any place in a Deed or instrument, proper or particular to a condition, but in what place it pleaseth the parties, and this word (proviso or provided) is as apt a word to make an Estate conditionall, as *Sub conditione*, or any other word of condition, but notwithstanding when this word proviso maketh an Estate or interest conditionall, three things are to be observed.

First, That the proviso do not depend upon another sentence, nor participate thereof, but stand originally of it self.

Secondly, that the Proviso be the word of the Bargainor, Feoffor, Donor, Lessor, &c.

Thirdly, That it be compulsory to enforce the bargain, Feoffee, Donee, Lessee, &c. to do an Act, and where these concur, it was resolved, that it was a condition, in what place soever it be placed, for *Cujus est dare ejus est disponere*. And although words of covenant be contained in the same clause of the proviso it self, yet (the proviso being in judgement of Law, a word of condition) it shall not lose his force, and so it hath been judg'd in *Symson et Tutterel*, 26. E. Serjeant Bendlowes demised to Tutterel certain Lands in Essex, for forty years, provided alwaies, and it is covenanted and agreed between the said parties, that the Lessee, &c. should not alien, and this was adjudg'd a condition, by force of the Proviso, and a covenant also by force of the other words. Also it was adjudg'd in *Banco Regis* 36. E. between the Earl of Pembroke, Plaintiff, and Sir Henry Barkely Defendant. The Earl granted the Office of the Lieutenantship of the West part of the Forrest of Fronslewood, in Com. Somerset, to Sir Maurice Barkely, Father of the said

Sir Henry in Tail; provided awayes, and the said Sir Maurice Barkely for him, &c. doth Covenant to, and with the said Earl, that neither he the said Earl, nor any of his Heirs Males, &c. shall cut down any wood growing upon any part of the premises. And it was resolved by all the Justices of England, upon argument before them at Serjeant-Isne, that although the proviso was coupled with the express Covenant of the Grantee, and every condition ought to be created by the words of the Grantor, Donor, Feoffor, &c. yet in judgement of Law, this word (provided) was a condition created by the Grantor, although all the residue of the sentence be the words of the Grantee, for (proviso) being an apt word of a condition, the same sentence containeth the words of the Grantor, purporting a condition, and the words of the Grantee comprehending a Covenant.

This word (proviso) when it dependeth upon another sentence, or hath reference to another part of the deed, doth not make a condition, but a qualification or limitation of the sentence or part of the deed, to which it is referred. As in a Lease without impeachment of waste, provided that he shall not do voluntary waste, grant of a Rent charge, provided that the Grantee shall not charge the Grantor, &c. Resolved, that B. have the Rent, notwithstanding that before the *Reddendum*, the use in Fee was vested by the recovery in A. and notwithstanding 'twas objected, that the Rent ought to be limited out of the Estate of the Recoverors, for 27 H. 8. hath an express clause. Where divers be seised, to the intent, that one shall have an annual Rent, the same person be adjudged in possession, & distress of the same rent, as if a sufficient grant had been made, and so here the intent being that B. should have the Rent, con-

struction

Provision shall be made, *ut res magis valent quam pere-*
at. Resolved, that the fine levied by B. and A. to
 P. hath not extinct the condition (and this was the
 great doubt of the Case) 1. Because by the gene-
 ral covenant 'tis declared, that all assurances after-
 wards to be made, should be to the uses and intents
 in the same Indenture, and to no other; and the
 Indenture intends that the condition should be saved
 as the Lord releases all his right in the Land, saving
 his Rent. *Putnams Case*, 4. 5. P. and M. Dyers
 Easement of a Mannor rendering Rent, and a re-en-
 try, and a Covenant by any Indenture to Levye a
 fine, which should be to the uses and intents of the
 first Indenture, and to no other use, which was levied
 according, with the usual words of release of all
 his right, yet resolved, that neither the Rent, nor
 the condition was destroyed, and 23. of the Queens
Tallers Case, a rent reserved by fine before, was not
 destroyed by a common recovery, and general entry
 into warranty, and 34. of the Queen in *Clover and*
Childs Case, adjudged according to *Putnams Case*;
 for the same Reason 'twas adjudged in this Case, 14.
 of the Queen, for the Advowson of *Alloxton*, for
Modus & conventio vincunt legem, and covenant and
 agreements of the parties hath power, First, to raise
 a use. Secondly, to declare uses upon fines, reco-
 veries, &c. Thirdly, for to preserve rents and condi-
 tions, and for to direct recoveries, fines, &c. and the
 saving may be contained in another deed, delivered
 at the same time. And these common assurances, *uses*
fines, and recoveries, are to be construed, according
 to the intent and common usage, without prying into
 them with Eagles eyes. Also, here the *Batgains*
&c. recovery, &c. fine, &c. though made at several
 times, yet, all by mutuall agreement, are but one as-
 surance, and tend for to perfect a bargain, &c. and
 there-

therefore the one shall not destroy the other, resolved, that except in speciall cases a fine, *Sur grant & render*, cannot be averred by word to another use, then is in the fine, feoffment, &c. yet in some cases, it may be ruled in part by averment, by word, when the originall contract is by deed; but a man may by word aver another consideration, which stands with the consideration expressed, but not against it: Read the book at large for this purpose.

Resolved, that by the death of A. the condition was broken; for when the Feoffee or Grantee is to do an act to the Feoffor, &c. upon condition, and no time is limited, regularly, the Feoffee may do it at any time during his Life. If the Feoffor or Grantor do not hasten the same by request, and upon request and day or time limited, the Feoffee or Grantee ought to do it accordingly: and if no request be made, and the Feoffee or Grantee that ought to perform the condition dye, the Condition is broken. Yet, this generall rule admits an exception, for, here in case of an advowson, he hath not time during his life, though no request be made, but upon contingency, to wit, if no avoydance fall in the mean time, for if the Grantee lay till the avoydance fall *Ipso facto*, the condition is broken, for B. cannot have all the presentations during his life, which was the effect of the Grant, and the Advowson is come into another plight than it was. But where the day is certain for the performance, and the party dye before, the condition is discharged, because the performance is become impossible by the Act of God, and therefore when a day certain is appointed, tis good that the Heir of the Feoffee be named in the condition. Another diversity was also agreed, when tis to be performed to a stranger, he ought to request the stranger in convenient time for

for to limit a time when it shall be done, but if it be to the Feoffor himself, he ought not to perform it, before request. Another diversity was taken by some, when the feoffee dies, and when the feoffor dies, for in the one case the condition is broken, in the other not.

Binghams Case, 43 of the Queen, fo. 61.

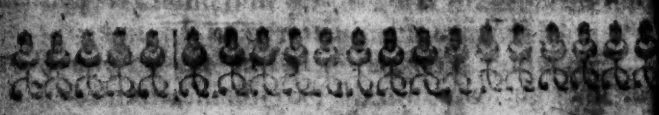
R. *Bingham* the Grandfather held the Mannor of B. M. of Sir *Jo. Horsey*, as of his Mannor of H. and Ievyed a fine to the use of him, and his wife for life, and after of R. the Father, his Sonne and Heir, in tayl, and after to the right Heirs of the Grandfather, R. the Father dyed, the remainder in tayl descended to R. his Son within age, Sir I. H. suffered a recovery of the Mannor of H. to the use of himself and his Wife, in tayl, and after, to Sir R. H. his Son and Heir in tayl, after to the Heirs of Sir I. Sir I. and his Wife dyed without issue, Sir R. enters, R. B. the Grandfather, dyes, by which the reversion in Fee descended to R. B. the wife of *Robert* dies, R. within age enters and leases, &c. Resolved, that the life limited to the right heirs of the Grandfather; upon the fine, is a reversion in the Grandfather, expectant upon the tayl, not a remainder, so twas resolved in *Warwick & Mitfords Case*; and so twas resolved in the *Earl of Beaufords Case*. Resolved, that Sir R. H. shall not have the ward of the Land, for the reversion in Fee is holden of him, and not the Tayl, though both descend from the same Ancestor, for the tayl cannot be drowned, and if Tenant in tayl grant over the reversion, he shall hold the tayl of his Grantee, and though the Seigniorie of the tayl be suspended, yet the Donee hath two distinct estates, and the reversion is as a Mesne, betwixt the Donee, and the Lord,

Lord, and the Lord is not defeated; for the Law gives no wardship in such cases, and if it were admitted, that by the unity of Tenure, betwixt the Donee & reversion, 'twas determined, yet nothing shall be holden of the Lord, but the reversion, and in some cases, the Donee in tail shall hold of no body, as a gift in tayl, the remainder to the King. Resolved, if the Grandfather were Tenant for life, the remainder to the Father in tayl, the remainder to the Father in fee, the Father dies, his heir within age, and Sir I. H. grants the Seigniorie to Sir R. H. and the Grandfather dies, that Sir R. H. shall not have the ward of the Heir, because R. the Father did not hold of him, nor any of his ancestors, the day of his death, nor the Tail was not within the fee and Seigniorie of Sir R. or any of his Ancestors at the death of R. the Father; and the Writ saith *Precept, &c. Eo quod terram illam de iuramento, die quo obiit*. And though that during the life of Tenant for life, the Heir of the remainder shall not be in ward, because Tenant for life is Tenant to the Lord, yet the death of Tenant for life is not the cause of ward, but the removing of an impediment, as in *Page and Caries Case*, Tenant for life commits waste, and after Tenant for life in remainder dies, he in remainder in fee shall have waste. 'Twas said, when two accidents are required to the consummation of a thing, and the one happens in the time of one, and the other in the time of another, neither the one nor the other shall have benefit by it; as the Tenant ceases for a year, the Lord grants his Signiorie, and then the Tenant ceases for another year, neither shall have a *Cessavit*, which was agreed. So *Lacies Case*. Trin. 25. of the Queen, who gave a mortal wound upon the Sea, of which the party dyed upon the Land, yet he was discharged, because the stroak was upon the Sea, the

the death upon the Land, so that neither the Admiral, nor a Jury, can inquire of it: and 'twas said, when diverse accidents are required to the consummation of a thing, the Law more respects the original cause, than any other. A man presents to a Church in time of warr, notwithstanding the party be instituted and inducted, *Tempore pacis* all is void. So the Law more respects the death of him in the remainder, the Original cause of wardship, than the death of Tenant for life, which is but *Causa sine qua non*, and rather a removing of an impediment, than a cause, so 'twas resolved that neither the one, nor the other shall have the ward. Resolved, that Sir R. should not have the third part of the Land, by 32 & 34 H. 8. for though R. the Grandfather had limited the use to the Father, which is within the Statute, yet when R. the Father dies, in the life of the Grandfather, the Statute extends no further, for the Heir of the Father, who is in by descent, shall be in ward by the common Law, not by the Statute, and if the Statute should extend to the Son and Heir of him in remainder, by the same reason it should extend to all the Heirs of him in remainder, *In Inspectum*.



Lib
c, u
ther
d, th
inche
ror v
defend
and re
Nary
ght, e
as we
remo
timen
cum
is no
arure
band
d luc
t by
t Efo
s wo
ht of
vrit c



THE

THE THIRD BOOK.

The Marques of Winchester's Case.

25. of the Queen. fo. 1.

Ionet Norris and Anne Mills were seised of the Mannor of M. and to the heirs of the body of L. a common Recovery is had against L. (without naming Anne) H. Norris being in remainder in tail, is executed for Treason, and 'tis enacted, that he shall forfeit Mannors, &c. uses, possessions, offices, rights, conditions, and all other hereditaments, L. dyed without issue, Anne dyed, the Queen brought error against the Marques of Winchester, heir of the survivor of the recoverors, the error was, that the original Writ of entry wants, the defendant pleaded, that 14 of the Queen, she gave and restored to the Lord Norris, Sonne and heir of Norris, the Mannor *ex speciali gratia*, &c. and all her right, estate, title, claim, &c. Resolved, that the Record is well removed by the Writ of Error, which was for remove the recovery of the Mannor of M. in *M. cum pertinentiis*, and the Recovery was of the Mannor of *cum pertinentiis*. Resolved, that this Writ of Error, is not given to the King by any of the words of the statute of 28 H. 8. because the terretenant is in by title, and the entry of the person attainted taken away, and such a right, for which the party hath no remedy, by action, is a thing consists in privy, which cannot Escheat, nor be forfeited by the common law, and the word (*right*) in the Act, shall be satisfied with a writ of entry, & 'twas observed by the Court, that by writ of attainder, a right of action was ever given.

E

Note,

Note, a diversity betwixt inheritances, and chattels for Obligations, Statutes, Recognizances, &c. are forfeited by attainder or outlawry. By the Court, if L. had made a Feoffment without warrant, this had been a discontinuance of the moiety, for the joynrure was severed. Resolved, that H. N. had no right to a moiety of the Mannor, for though the recovery were erroneous (for 'twas agreed, 'twas not void) yet the recovery being in force, the remainder hath no right, for the intended recompence, if tenant in tail suffers an erroneous recovery, & disseise the recoverer and die, his issue shall not be remitted, for the tail is barred, as long as the recovery stands in force; and the Court agreed, that neither an action without a right, with a descent, shall make a Remitter, as in the principal case, nor a right without an action, for a man shall never be remitted, but when an action lies, if the right and possession were in several persons. Resolved, for the one moiety, the Recovery shall be a bar to the tail, and remainder, for, though that as well L. as the vouchee might have abated the writ, because, Anne was joynrly seised, not named, yet, when the vouchee, without demanding any line, enters generally into warranty, & admits the Writ good, & L. recovers in value, which shall inure according to his estate, with the remainder over, 'tis barred, for by the recovery against L. the joynrure was severed, but for the other moiety, the recovery was not a bar to the tail, or remainder, because, for that L. was not tenant to the Præcipe; but the recovery is by Estoppell only. Agreed, that H. N. at the time of the attainder, was not intitled to have error, yet 'twas agreed, that the remainder upon a tail shall have error upon a judgement given against tenant in tail, when W. 2. inables the donor for to limit a remainder over upon the tail, all actions which the common law gave to privies in estate, are by the same Act, as in

dent, given also, as a reversion, or a remainder, shall
 have Error upon a Judgment given against tenant for
 life, though not privy by aid, voucher, or receiver. But
 agreed, that by the common Law, Error doth not lye
 by, &c. during the life of tenant for life, except he were
 privy to the first record by aid, voucher, or receiver,
 for remedy whereof 9 R. 2. ca. 3. was made, which
 gives an attainr or error, during life, upon which sta-
 tute the Court resolved, 1. that though the Statute
 speaks only of reversions, yet remainders are within
 the purview, 2. That a reversion expectant upon a tail
 is out, for the Statute enumerates these four estates;
 Life, dower, courtesie, and Tenant in tail after possi-
 bility, which declares their intentions to exclude re-
 versions upon tails, & this upon great reason, for the
 tail by possibility may continue for ever, & here L. sur-
 vived N. H. and so his possibility of error destroyed, &
 no word of the act extends to give a possibility. Resol-
 ved, admitting the writ of error had been given to
 the Queen, that by this general grant of the Queen,
 it did not pass; for a common person can not grant it,
 and therefore it ought to pass by prerogative, & ought
 to have precise words: adjudged in *Cromers case*, 8 of
 the Queen; the Queen having a right of disseisee
 warranted, grants *de speciali gratia*, &c. all lands, &c.
 The right doth not pass, without special recital, and
 words. *Owen and Morgans case*, Trin. 27 of the Queen;
 baron and Feme are seised, and to the heirs of the bo-
 dy of the husband, a recovery is had against the baron
 sole, without naming of the wife, & after the wife died.
 Resolved, that though the wife were not party to the
 writ, nor the Conisance (for the estate of the husband
 and wife, was by render upon a fine levied by the hus-
 band) and though it does appear within the same Re-
 cord, that she was a stranger, yet the render to her is
 bindable only. Resolv'd, that this recovery against the
 husband

husband only, shall not bind the remainder, for be-
twixt husband and wife, there are no moities, and the
husband hath no power to sever the joynture, or dis-
pose any part, and he, during the life of the wife, is not
seised by force of the tail; and he can by no act, exe-
cute any part; so the *Præcipe* being brought against
him only, the recompence cannot enure to the tail
or remainder, for, to all it cannot, for the wife hath
joint estate in possession, and for moiety it cannot, for
there are no moities, and the remainder depends upon
the entire estate, and recompence recovered by the
husband only, cannot enure to him, who hath a re-
mainder depending upon the undivided estate of the
husband and wife, and the join-tenancy cannot be
severed by the judgement against the husband only,
and though the husband hath all the inheritance, yet
because by no possibility, it can be executed, 'tis as
one, as if the husband had a remainder depending upon
an estate for life, and then a common recovery should
not bind, because, not Tenant to the *Præcipe*, nor seised
by force of the tail; but took effect by Estoppel
only. The issue may say, this ancestor was not tenant
tempore brevis, and though here the husband survived
the wife, this is not material, for the Law adjudges
as 'twas then.

Copledikes Case; 44 of the Queen. fo. 4.

C. And his wife were seized, and to the heirs male
of the body of the husband, the husband levied
a Fine to A. B. recovers in a writ of entry against
who vouches the husband only (the wife living) who
vouches the common vouchee. Resolved, that this re-
covery shall bind the remainder, for here was a law-
ful tenant to the *Præcipe*, & though the husband was
only vouched, and not his wife, who had a joint estate

with him, yet the husband coming in as vouchee, he came in, in privity of the estate tail, and not of another estate, & the recovery in value gives recompence to the tail, which the husband had, & to the remainder. A. tenant in tail, the remainder to B. the remainder to C. the remainder to D. A. makes a Feoffment, the feoffee suffers a recovery, B. is vouched, & he vouches the common vouchee, A. is not bound, but B. and all the remainders are, for though the remainders are discontinued, and cannot be remitted, till the tail be recontinued, yet in a common recovery, which is the common assurance, he which comes in as vouchee, shall be in judgment of Law, in privity of the estate, which he ever had, though the precedent estate, upon which the estate of the vouchee depends, be discontinued, so here the husband shall be said in of the tail, and 'tis the stronger, because the estate of the wife was put to a right, so that the husband came in as sole tenant in tail, and not joyntly with his wife, because, she is not vouchee, & he cannot be in of another estate, because, once he had a tail, but had they had a joynt estate to them, and the heirs of their two bodies, he being only vouched, it might be doubted, whether the tail should be barred, because the wife had a joynt inheritance with him. 8. of the Queen, *Dyer, Kirttons case*, A *Præcipe* is brought against tenant for life, & the remainder in tail, they vouch over, it shall not bind the tail, for the remainder is not tenant to the *Præcipe*, and the land is recovered against the tenant for life only, and recompence shall not go to the remainder, and the remainder was never seised by force of the tail, and so 'twas adjudged in *Leach and Coles case*, 41 of the Queen.

Heydons Case, 26 of the Queen, fo. 7.

THE Guardians & Canons Regular of the late College of O. seised of the Mannor of O. granted a

Copy-hold to Father and Son for their lives, &c. and after they leased it to H. for fourscore years; rendering the ancient Rent, & after surrendered their college. Resolved, that the lease to H. was voyd (the Copy-hold for life continuing) by the Statute of 31 H. 8. For Copy-hold is an estate for life, and the statute saith (of which any estate or interest for life, &c.) at the making of such grant had continuance; read the Book at large where you have admirable rules for true interpretation of all Statutes. Resolved, when a Parliament alters the service, tenure, interest of the land, &c. in prejudice of the Lord, custom, or tenant, the general words shall not extend to copyholds, as the Statute of 22. *de donis conditionalibus*, doth not extend to them, for if the statute should alter the estate this should also alter the tenure, for the donee ought to hold of the donor, and to do such service (without special reservation) as his donor did to the Lord, and the intent of the Act was not to extend to such base estates, which were taken then but Tenants at will, and the Statute saith, *Voluntas donatoris observetur in carta*, &c. So that which shall be entail'd, ought to be such an hereditament, which may be given by Charter, and great part of the land within the Realm being granted by Copy, it would be inconvenient that Copy-holds should be entail'd, yet neither fine nor Recovery should barr them, so that the owner cannot (without making a forfeiture, by assent of the Lord, and a new grant) dispose of it for payment of debts, advancement of his wife, or younger issues, wherefore the statute does not extend to them by *Manwood Ch. Baron*, which the Court agreed. But it was objected; that the Custome and the statute co-operating, might make a tail, as if by a custome, a remainder had been limited over, & enjoy'd, & plaintiff in nature of a *formedon in descender* brought, and the land

land recovered by it; so neither the custom without the Statute, nor the Statute without the custom can make a tail. And *Littleton* saith, that if a custome hath been, that lands, &c. have been granted, &c. or in tail, &c. & *paulo post*, that a *Formedon en descender* lies of all tenements, which Writ was not at Common law. *Manswood* answered, if the Statute doth not extend to them, without question the custom cannot; for, before the Statute, all estates of inheritance were fee-simple, and no custom can commence after the Statute for this being made 13 E. 1. is made within time of memory; and *Littleton* is to be intended of a fee simple conditional, for he knew well that no custom could commence after the Statute of W. 2. as appears in his book 2. ca. 10. and 34. H. 6. & a *Formedon en descender*, in special cases, lay at the common law. And by the Court, another Act made at the same time, which gives an *Elegit*, extends not to Copi-holds, for the reason aforesaid; but other Stat. made at the same time extend to them, as ca' 3. which gives a *Curia in vita & recepte*, and ca' 4. which gives to the particular tenant a *Quod ei de forceat*. Resolved, that though 'twas not found, that the said rents were the usual rents, accustomed to be reserved within 20 years before, yet, because 'twas found, that the accustomed rent was reserved, and a custom goes to all times before, it shall be so intended, without shewing the contrary; and Judgement was entered for the Queen.

The common Law is founded upon the perfection of reason, and not according to any private and sudden conceit or opinion.

Dowries case, 16. E. 1. An information in the Exchequer f. 9.

THE Duke of N. seised in fee of 5. Messuages in St. S. Parish in H. in the tenure of W. G. bargains & sells his tenements in the Parish of St. A. in H. in the occu-

pation of W.G. and is attainted and Executed, Our Elizabeth grants them to I. F. if concealed, the Defendant D. claimeth under that Patent, against whom the Attorney informeth, &c. And Judgement was given for the Queen.

1. Resolved, nothing passeth by the bargain and sale, because the first certainty was false, otherwise it is, if the first certainty be true, and the second false, so the Bargainee was a disseissee.

2. These Lands were not in the Q. by the Statute of 33. H.8. c. 20, without *Scire facias* or seizure, because the words of the Statute, That Lands shall be in the K. without Office, shall be construed, as if an Office had been found: And Lands of a Disseissee attainted, shall not be in the K. by Office without *Scire facias*, or seizure, also all possessions, &c. are saved by the said Act, as if it had not been made.

3. That the Q. having but a right it doth not pass by the grant of the said five Mesuages: and after, special Office was found, and a *Scire facias* brought against the Terretenants, and judgement given, and the Tenements seized into the Q. hands, and the new Letters granted them to S. and his Heirs, who peaceably enjoyed them.

Sir William Herberts Case, 26. Eliz. In the Exchequer, in Error, fol. 11.

M. H. acknowledged a Recog. of 3000 l. to the K. and died, a *Scire facias* issued against his Executors *heredes terrarum*, &c. The Sheriff returned, that he had no Executors within his Bayliwick, and further, that *Scire fecit. VV: H. militi, filio et heredi d. M. H.* W. H. maketh default, and judgement is given against him generally, and he bringeth Error, but upon his Petition to the Queen, he was admitted to Compound with her.

1. Re-

1. Resolved at the common Law (except in special Cases) neither Land nor Body were lyable to Execution in Debt or damages recovered, but Execution was to be done by *Fieri facias*, or *Levari facias* of his Goods and Chattels, and profits growing upon his Land, but in debt brought against one, as heir, his Land was lyable to execution, because the Plaintiff had no other remedy, for the goods belong to the Executors, but the body, goods and Lands of the K. Debtor or accomptant were ever liable to Execution, but such *Levari facias*, or *Fieri facias*, ought to have been sued within the year, or otherwise he was chased to his Writ of Debt, and now by *westm. 2. c. 45.* he may have a *Scire facias*, and by the 18 Chapter of that Statute, an *Elegit* is given of the moiety of the Land, which was the first Act that subjected Land to execution, for Debt or Recognizance, and by the Statute of 13. E. 1. *de Mercatoribus* 27. E. 3. c. 9. & 23 H. 8. c. 6. In Statute Merchant, & Statute Staple, all the Lands of the Comor at the day of acknowledgment shall be extended into whose hands soever they shall after come. But in all Acts *Viz & armis*, where a *Capias* lyeth in Process, there after judgement a *capias ad satisfaciend.* lieth, & the K. shall have a *capias pro fine*, & in such cases the Law (the preserver of peace) subj. ð the body to Imprisonment, and by *Mylebridge, c. 23. west. 2. c. 11.* a *Capias* was given in an accompt, the process before being a distress infinite, and by 25. E. 3. c. 17. the same process given in Debt, as in account, for before this Act the body was not liable to Execution for Debt as aforesaid.

2. If Land of the heir be seised in Execution; upon a recognizance of his ancestor, he shall not have contribution against a purchaser of his Ancestor, although he come in without consideration, & although the Heir be not charged as Heir, but partly as Terrenant;

tenant; but one purchaser shall have contribution against another purchaser, & one Heir against another Heir, because they are in *Æquali jure*, & therefore the Writ here which issued against the Heirs, without naming the purchaser is good, although he be charged as Terretenant. The Heir shall have an *Audita querela* as well as the Conusor himself before Execution issued, and a *Superfedeas*, but a Stranger shall not: If divers acknowledge a recognizance, the charge doth not survive, and the Land of one shall not be put in Execution, but all their Lands equally: so if two are bound to warranty, both, or their Heirs, and the survivor, and the Heir of the other shall be jointly vouches, and the Land of both shall be rendered in value. But if Baron and Feme, and the Heirs of the Feme are bound to warranty, and the Feme dye, the Land of the Baron may be solely taken in Execution, because there are no Moities between Baron and Feme. So that when Land shall be charged by any Lien, the charge ought to be equal, but in a Lien personal, otherwise it is, as if two are bound in an Obligation, there the charge shall survive: But a Purchaser, *Ex fide*, before any Action brought, shall not be subject to any charge. And three Errors were moved in record.

1. The *Scire facias* was *Hæredi terrarum*, &c. which is improper, for he is not Heir to the Land, but to his ancestor.

2. The Writ is *Scire facias hæredi terrarum*, &c. and the Return is, *Scire fecit W. H. militi hæredi prædicti M.* and every Return must answer the point of the Writ.

3. The judgement is general against Sir W. where it ought to be special, for otherwise his own Land shall be liable, where, by the Law, the Land only, which came to him by his Father, ought to be charged.

charged & he is charged as Terretenant, as aforesaid, but these points were resolved by the Court.

Nota, the new Writ of Error, after entry of the first was not brought, *Quod coram vobis residet*, because the Record is not removed out of the keeping of him who had the custody thereof before.

Barastons Case, 29. of the Queen, fo. 19.

B. Devised land for eight years, and after to his Executors, to perform his will, till H. his youngest Sonne came to the age of 21 years, and when H. comes to 21 years, then that he shall have to him & his heirs, H. died at the age of 9 years. Objected, that till H. attains to 21 years, the Land descends to the Heir, and for that he never attained to 21 years, this remains in the heir, and the intent appears by the words, that he should not have, till he come to 21 years, and this ought to precede the commencement of the remainder, and if land were leased till H. comes to 21 years, (H. then being of 9 years,) it is no absolute lease for 12 years, for if H. die before 21, the lease shall be determined, which the Court agreed. It was also said, that when the particular estate, which should support the remainder, may determine before the remainder can commence, there the remainder is not yett presently, but depends in contingency. If one make a Lease to A. for life, and after the death of B. the remainder to another in Fee, this remainder depends upon contingency, for if A. dye before B. the remainder is void. A lease is made to A. for life, the remainder to B. for life; and if B. die before A. the remainder to C. for life; this is a good remainder upon contingency. If A. survive B. which case shall one with the common case, which is many times reced on in our books, a lease is made to one for life, the

the remainder to the right heirs of I. S. this remainder is good upon contingency, (*viz.*) If the lessee for life survive I. S. otherwise not, & by the same reason, if a man have issue a son of 9 years of age, maketh a lease until the Son shall accomplish his full age, the remainder to another in Fee, as in this case, nothing vesteth in him in remainder presently, *Quod fuit necessum per tot. Cur. vide. Chudleyes Case, Labr. - 1.*

Ans. that in Wills the intent of the devisor is to be considered; for, when the devisor in his life by words, by good advice, might have made his Will sufficient in Law, there, though he makes it in disorderly manner, and in barbarous and unapt words, the Law will order those words, which want order, according to his intent, as in *Wellock & Hamonds Case*, Copyholder in Borough English devises to his Eldest Son paying 40 shillings within, &c. to every of other Sonnes, &c. surrenders according and dies, the Eldest Son did not pay within, &c. the youngest surrenders, and adjudged lawfull, and resolved.

First, That he had a fee, for the recompence and consideration, though it be not to the value, maketh a fee in construction of a will. Secondly, That those paying in a will, makes a condition, yet here 'tis a limitation; otherwise it would descend upon the eldest Son, who is to take advantage of it, and then it should be at his pleasure for to pay, or not, and therefore shall be, as if he had devised to the eldest Son, if he failes in payment. So here the devisor hath considered, what profits of his land, during the nonage of his Son, will suffice for payment of his debts, &c. and he did not intend that the term of the Executors should end by death of H: for so his debts should remain unsatisfied, & his will unperformed, and therefore the Law saith, it shall be construed, that the Executors shall have till H. should have come to 21 years of age.

of age, and therefore the Executors have a term for 2 years, which the Court agreed. And though (when) and (then) are Adverbs of time, yet when they referre to a thing which must of necessity happen, they make no contingency, & tis certain, that H. did accomplish, or might have accomplished the age of 21 years, and here, if the term should be ended by death, the remainder should be void; and the Court agreed, that in wills, and grants, the remainder ought to vest in possession, *Ex instanti*, the particular estate ends; but here the term did not end, &c.

Walkers Case, 29 Eliz. in Banco Regis.

Walker leases certain lands to Harries for years, the lessee assigned all his interest to another, Walker brought an action of debt against Harries, for Rent arrear after the assignment, and if the action be maintainable or not, was the question; and upon great deliberation and conference with others, it was adjudged *per VVray* thier Justice, Sir Thor. Gawdy and *Cur.* that the action *did lye* & was maintainable, in the argument whereof many things were resolved.

If a man lease a stock of Cattle or other goods, rendering a Rent at several daies, he shall not have an action of debt untill all the daies be expired.

Likewise, if a man make an obligation or other contract to pay several sums of money at several daies, he shall not have an action of debt, until all the days be expired, for these are personall contracts and not real: but in case of a lease for years, which is a real contract, the Lessor shall have an action of debt after every day.

By the Court, debt doth well lie in this case, against the Lessee, there are three privities. 1. In respect of the estate only, 2. Of contract only. 3. Of estate and

and contract together. The first between the Grantee of the reversion, or Lord by Escheat, and the Lessee, so betwixt the Lessor and the Assignee of the Lessee, the second betwixt the Lessor and the Lessee (as here) for, notwithstanding the assignment, and the privity of estate removed by the Act of the Lessee himself, the privity of contract remains.

First, because the Lessee himself cannot prevent the Lessor of his remedy; but when the Lessor grants his reversion against his own grant, he shall not have remedy, because the rent is incident to the reversion.

Secondly, the Lessee might grant it to a poor man, not able to manure the Land, or for malice, will suffer it to lye fresh, so the Lessor shall be without remedy, if debt should not lye against the first Lessee.

Thirdly, there is privity of contract and estate together, as betwixt the Lessor and the Lessee.

If a Tenant in Dower, or tenant by curtesie, assign over their estate, yet the privity of the action remaineth between the Heir and them, and he shall have an action of waste against them for waste done, after the assignment, but if the Heir grant over his reversion, then the privity of the action is destroyed, and the Grantee may not have any action of waste, but only against the assignee, for between them is a privity of Estate, and between the Grantee and the Tenant in Dower, &c. is no privity at all.

If a Lessor enter for condition broken, or if a Lessee surrender to the lessor, yet the lessor may have an action of debt, for arrerages due before the condition broken, or the surrender, and this in respect of the contract between the lessor & the lessee. 36 of the Queen, *Wiggle and Glovers Case* adjudg'd, the lessee assigns his interest, the lessor bargains, &c. the reversion, the bargainee shall not have debt against the lessee, but agreed, that the Lessor himself might.

37 *Eliz.* in *Banco regis. Int. Overton & Siddall.* Two points were resolved. First, if an Executor of a Lessee for years, assign over his interest, that an Action of Debt doth not lie against him for Rent due after the Assignment. If a Lessee for years assign over his interest and die, the Executor shall not be charged for rent due after his death, for by the death of the Lessee, the personal privity of the contract (as to the Action of Debt) in both these cases were determined; *20. of the Queen, Brome and Hores Case.* A Lessee of three acres rendring Rent, assigns one to B. the Lessor suffers a recovery to the use of C. in fee, who brought Debt against the first Lessee, adjudged it lies, for the Lessee assigned his interest, but for part, for the privity of Estate remains because he assigned but part, *41. of the Queen, Marrow and Turpins Case,* in Debt against two Administrators, upon a Lease made to their Tenant, the Defendants plead, that before the rent appeared, the one of them had assigned all his interest to S. of which the Plaintiff had notice, and accepted the Rent by the hands of the assignee, due after the assignment, and before that this rent now demanded was due, the Plaintiff demurred, and adjudged against him, because the privity of the contract was determined by the death of the Lessee, and therefore after the assignment made by the Administrator, Debt doth not lye for rent due after the assignment. Also it was said, that if a Lessee assign over his term, the Lessor may charge the Lessee or his Assignee at his Election. And if the Lessor accept the rent of the assignee, he hath determined his Election, and shall not have an Action after against the Lessee, for rent due after the assignment, no more than a Lord having received the Rent of the Feoffee, shall ayow upon the Feoffor afterwards.

Butler

Butler and Bakers Case, 33, and 34. of the Queen. fo. 27.

W. B. & his Wife seised of the Mannor of H. (by an Estate made to them during coverture for the joynture of the Wife) in tail, holden *in Capite*, and W. seised of Land in F. both which amount to a third part of all his Lands; and also of the Mannor of T. *in capite*, which amounts to two parts; W. devises T. to his Wife, upon condition, that she should take no former joynture, and died, the Wife in *pays* refused H. the question was, whether the Will were good for the entire Mannor of T. or but for part, by the Stat. of 33. & 34 H. 8. Resolved, that at common Law if a gift be to a Husband and Wife in tail, &c. the Husband dies, the Wife cannot devest the free-hold by any verbal Waiver, or disagreement in *pays*; as if she say before entry, that she will never agree to it, she may enter when she pleases; so, if she saith, (reciting her estate) that she assents, &c. to the said estate, yet afterward she may waive it in a Court of record; but if she enters into the Land, and takes the profits, though she saith nothing, 'tis a good agreement in Law, for the Law more respects acts without words, than words without acts. & a freehold shall not be so easily devest'd to the intent that the tenant to the *Præcipe* should be the better known. But as an act in *Pays* may amount to an agreement, so it may amount to a disagreement, but this is always of one & the same thing; if the tenant by deed infeoff the Lord, and a stranger, & maketh livery to the Lord, if the Lord disagree by word, 'tis worth nothing, and if he enters generally, and takes the profits, 'tis an agreement, but if he distrains for his Seigniorie, 'tis a disagreement; yet in some cases, a claim by words shall direct the entry to be an agreement to one Estate, and a disagreement to another, &c. See the Book at large, but a man may

devo

deveft the property of goods and Chattells, or an obligation fealed to him, by difagreement *In pays*.

Resolved, that though the eftate was created by way of ufe, which ufe, before the Statute, might have been waived *In Pays*, yet, now the ftatute hath fo incorporated the ufe and poffeffion of the Land, that it cannot be waived *In pays*, more than an eftate created by feoffment, &c. yet 'twas here refolved, That the refufall *in pays* to have H. and the entry, and agreement to T. was a good agreement to the one, & difagreement to the other. And this by 27 H. 8. ca^e 10. *If any woman hath lands, &c. affured after marriage, &c. after the death of the Husband, Shee may refufe her joynture, and take her Dower, &c.* And upon thefe words the Court agreed, That a woman might refufe her joynture *in pays*, and be in-dowed by confent or writ. The great doubt was, if by his refufall. of H. by operation of Law, it doth defcend immediatly to the heir after the death of the Devifor; for to fatisfie the ftatute which faith, *The King fhall take for his third part fuch mannors, &c. as fhall defcend, &c. immediatly after the death of the devifor.*

Resolved, Firft, Upon the reafon of the common law, the refufall fhall not have fuch relation that the wife fhall be good, for the intire mannor of T. for relation is a fiction of Law, to make a nullity of a thing *Ab initio*, to one certain intent, which in truth had being, and that *Propter neceffitatem, ut res magis valeat, quam pereat.* 11 E. 3. The law will make a nullity *ab initio*, that the wife fhall have dower, but not as to a collateral intent, as if the reverfio were granted of the Lands which the Husband & Wife held in tail, and the Wife for to have dower difagrees, yet the grant is good, for ſhe may be endowed though the grant ſtand; and *Relatio eſt fictio juris, & intenta ad unum*; And though relations aid acts in law, as Dow-

T, yet will never aid the acts of the party, to avoid
 them by relation, as a man in feoffs an infant, or feme
 covert, and after gives, &c. or devises the Land, or
 any thing out of it, the Infant or Husband disagrees,
 this shall have relation betwixt the parties, that the
 Infant or Husband shall not be charged in damages,
 but shall not make the void devise, &c. good. A lease
 for life, the remainder to the King, the King grants
 his remainder, the deed is inrolled, it shall have re-
 lation to make this pass *Ab initio*, to the King, not to
 make the void patent good. And as relations extend
 only to the same thing, and the same intent, so, also
 to the same parties, not for to prejudice a strange
 feoffment of a Mannor, and along time after lives
 the Tenants attourn, this shall have relation, to make
 the services pass *ab initio*, or otherwise they could ne-
 ver pass, nor be parcell of the mannor, but not for
 charge the tenants for the arrerages in the mean time.
 So here, the refusal shall relate as to the mannor of
 only, not to T. and to the wife only, but not to pre-
 judice the heir (upon whom part of the mannor of
 descended) to make the devise good for the third part
 which was void at the time of the death: For, *Or-
 testamentum morte consummatum est*, and it was at
 death, so it shall remain. Resolved, that after the
 tute of 27. H. 8. and before the Statute of 32. H.
 the Mannor of T. was not devisable, & therefore when
 the devisor hath not pursued the authority, which
 Act of 32. & 34. H. 8. gives, it was void for part.

The first branch he hath not pursued, which is
 (That all, &c. having a sole estate in fee simple, in any
 manors, &c. shall have full and free liberty, &c. to dispose
 his last will in writing, as much as of, &c. as shall amount
 to the clear yearly value of 2 parts in three to be divided
 For he had not the mannor of H. for his Wife had
 jointly with him. See many excellent Cases in

Book at large, adjudged upon this word (*Having*) in the Statutes, the *Initium* of a Will ought to be full and perfect, which is the writing, and therefore, if the devisor command one to write his Will, & he devises white Acre to A. and his Heirs, and black Acre to B. and his Heirs, and dies, before the devise to B. is written, yet the devise to A. is good. But if he devises to A. &c. upon condition, and he writes the devise, and the Testator dies before the writing of the condition, tis void, for in the one case, the devises are several, and the one is perfect, in the other Case 'tis unmaimed, and imperfect, for the intire devise was not fully put in writing, so twas resolved in the Case at Barr, that neither the commencement, nor the end of the Will was full or perfect, for at the time of writing of it, and at the death of the devisor, he had no power in respect of the joynt estate in H. to dispose all the Mannor of T. which amounts to the value of two parts of all. Also, upon the first Branch, he ought to have a sole estate, and here his Wife is joyntly seised with him, and she cannot disagree during coverture. The Statute gives liberty to him, for to devise two parts by will, but this is to be intended of such Land, which he might convey by act executed, but here by reason of the undivided estate of the Wife, he cannot dispose it but during coverture. Also, the third part of the *Cleer yearly value* is saved to the King, and the intent of the Statute was, that the King shall have the equal benefit at least for his third part, as the devisee hath for two parts, but here the devisee had two parts absolutely, & the King but a possibility, *viz.* If the Wife would disagree, which is at her pleasure, and this Statute hath been constru'd, that equality should be observed. A man which held three Mannors of three Lords, could not devise two of them, but two parts of every one; upon these words (*Cleer yearly value*) 'twas

said that of Inheritances, which are not of any yearly value, some are devisable, some not, as *Bona & catalla felonum, fugit, or utlagat*. Fines, amerciaments, within such a Mannor or Town, these cannot be devised, nor left to descend, but a *Leet, waif, or Stray*, or other hereditament appendent, or appurtenant to a Mannor, pass by devise of the Mannor with th'appurtenances as incidents, & the Statute had no intent for to dismember these things, which by lawfull prescription had been united. But if a hundred, with goods of Felons, Outlaws, Fines, Amerciaments, returned Writs, and such other casual hereditaments, within the same hundred, have been accustomably demised for a yearly rent, they may be devised within the purview of the said Act. 'Twas said upon the words of the Stat. which says, that he may devise a rent common, &c. *Out of two parts*, that a devise of a rent of the full value out of all is void, but out of two parts is good. And 'twas observed, that upon 32 H. 8. a devise of all his land, had been good for two parts, as was judged in *Wentons Case*, for Land is severable, but rent is a thing intire, and 34 H. 8. only gives authority for to devise it.

The second branch which speaks of division, cannot be satisfied, for, during his life, he himself could not (*Set it out*) and after his death, it survives to the Wife. The third and fourth branch is not satisfied by this word (*immediatly*) for till disagreement, without question the Mannor of H. survived to the Wife, and if an Office had been found before disagreement, without doubt, the Queen should have a third part of the Mannor of T. and the devise being void at the death of the devisor, and the third part lawfully vested in the Heir by descent, it cannot be made good and devised by a subsequent disagreement. *Littleton*, descends to the Heir of Tenant by the courtesie of a disseisin

refl

resse, doth not take away entry, for the Heir comes not in immediatly, and 'twas agreed if a man devises two acres holden by Knights service, and a reversion upon a Lease for life descends to the Heir, this is no immediate descent within the Statute, but the third part of the two ought to descend; see many excellent Cases of devises adjudged upon the Statute.

Another good Case of relations, *Jennings & Brags Case*, a disseisee makes an Indenture purporting a Lease for years, and delivers it to a stranger, out of the Land, as an Escroul, and commands him for to enter, and deliver this as his deed, to the Lessee, who doth it, and adjudged a good Lease, and this diversity agreed.

First, When the person at the first delivery hath not ability to make the contract, and before the second delivery hath, 'tis void, as an Infant, and a Feme covert; otherwise, when at first delivery, the person hath ability, but cannot perfect it, till an impediment removed, which is done before the second delivery, here 'tis good as at Bar.

Resolved, secondly, that to some intent the second delivery shall have relation to the former, by fiction of Law, *ut res magis valeat quam pereat*, as if a Feme sole deliver a Lease as an Escroul, and after takes husband or dyes, yet by the second delivery 'tis a good deed *ab initio*; and to some intent, *ut res magis valeat, &c.* it shall not relate, yet in truth, the second delivery hath all its force by the first, and is but an execution and consummation of the former, as at Bar, for if it should relate to the first delivery, then it would avoid the lease, for it should be made by him, who was out of possession, & *fiction legis inique operatur alicui damnum vel injuriam*.

Thirdly, 'twas resolved that as to collateral acts, that there shall be no relation *Omnino*, as if the Oblige

See release before the second delivery, such release is void.

Ratcliffes Case. 34 of the Queen. fo. 37.

A Feme sole devises Socage land to the sonne of her daughter in tail, the remainder to two Sisters of the devisee, and to the heirs of their two bodies, by equal portions to be divided, the remainder in fee to the Mother of the daughters, and dies, the sonne dyes without issue; *Mattha* one of the daughters dwelling in her Mothers house (daughter of the devisor) within the age of 16, and above 14, departed at the second hour in the night, with the consent of the husband of her Mother (in whose house she was 8 miles, and there married E. R. the issue was, whether E. R. the Mother, had the custody of the said M. at the time of the contract and marriage aforesaid, if she had, then the land of M. was lost by the Statute of 4 and 5. P. and M. ca. 8.

Resolved, that there were two manners of custody, or Guardianships, the one by the common Law the other by the Statute; at common Law, for manner of guardians, viz. Guardian in Chivalry, Socage Nature, by Nurture. The first two are fully described in our Books; but great controversie was at barre for Guardian by Nature: Some held, that the Father only shall have the custody of his sonne and heir apparent, within age, not the Mother, Grandfather, &c. Also, that the Father shall not have the custody of his daughter and heir, for it ought to be such an heir as shall continue sole and apparent heir; as the Father shall not have the custody of the youngest son in Borough English, for tenure in Chivalry. Others affirm, that not only the Father, but every ancestor male or female, shall have the custody of his heir apparent.

title against the defendant, being lessee of the husband of the other Sister, yet, because the issue was found against him, judgment was given *Quod nihil capiat, &c.*

Boytons Case, 35 Eliz. in Banco regis, fo. 43.

A Writ of *cap. ad satisfaciendum* is returnable at *westminster die Lune prox. post Crast. animarū*, the party is arrested, the Sheriff is not bound to bring the prisoner in *recta Linea*, from the place where he was arrested, or from the County. But if he have the prisoner in Court at the day of the return (being never out of his custody in the mean season) it is good: But if a Sheriff or a Bayliff assent that one who is in execution, and under their custody, to go out of the Gaol for a time, and then to return, yet although he return at the time, it is an escape. And so it is likewise if a Sheriff suffer him to go with a Bayliff or a Keeper, for the Sheriff ought to have him in *recta custodia*, and the Statute of *westminster 2. cap. 11.* says, *Quod carceri mancipentur in ferris.* So as the Sheriff may keep him in yron and fetters, to the intent that they may sooner satisfy their Creditors. The Sheriff upon a *Habeas corpus* for one in Execution may bring the party what way he will, so as he have his body at the day, according to the Writ; If one in execution escape out of the Gaol, and fly into another County, the Sheriff upon fresh syle, taketh him again before any action brought against the Sheriff, the Judges have adjudged this no escape, and if one in execution escape, *de son tort*, and be taken again, he shall never have an *audita querela*, because a man shall not take advantage of his own wrong.

Sir George Brownes Case, 36 of the Queen, fo. 50.

Issue in special rail, the remainder to himself in fee, in the life of his Mother, tenant in special rail, levies

levies a Fine (in truth, with Proclamations, though they were not found) to Sir G. B. the Mother (living the Sonne) leased for three lives, which was not warranted by 32 H. 8. upon which Sir G. B. entered.

Resolved, that the lease for three lives, though without warranty, was within 11 H. 7. which saith, (*discontinue, alien, release, or confirm with warranty*) for, the intent of the statute was, to prohibit not only every barr, but every manner of discontinuance which puts the heir to his reall action; and because a release, or confirmation, is no discontinuance without warranty; the warranty referres to them, to make them equivalent to an estate which passeth by livery. Note, the title of the Act (*Discontinuance of right, or estate*) also in the act 'tis said, *If no such discontinuance, warrant, nor recovery had been*; so that discontinuance stands in equall degree with warranty.

Resolved, that if the issue had granted his remainder in fee only, and not barred his tail, he might have entered by the words of the Act, for the forfeiture, which saith, *Every person to whom the interest, &c. title or inheritance, after the decease of the woman should appertain, may enter and enjoy, &c.* As if no such discontinuance had been made, and if no such had been, the Land should descend to the issue.

Resolved, that in this case, Sir G. B. shall enter, for if no discontinuance had been, he should enjoy it against Anthony the issue, and all the heirs of his body though the Fine be levied in the life of the auncestor for 32 H. 8. sayes, *In any wise intailed to the person levying the Fine, or to any of his auncestors*; and though it work, part by conveyance, part by conclusion, yet the tail being extinct by the Fine, Sir G. B. in remainder shall enter. The same Law in this case, though the Fine were without Proclamations, for the issue against his Fine cannot enter; but the entry of the conusee is lawfull,

Anderson

Anderson said, where it was invented (to make an evasion out of this Act) that a woman should accept a Fine come ceo, &c. and render for a thousand years, pretending this not within the words (*discontinue, alien, release with warranty, &c.*) that this was an alienation within the intent of the Act, or otherwise the Statute should serve for nothing, and so it hath been resolved,

Rigewaies Case, 36 El. in Banco regis, fo. 52.

It was resolved *per tot. Cur.* although the prisoner in execution escape out of view, yet if fresh sure be made, and he be taken again in *recenti infecutione*, he shall be in execution, otherwise at the turning of a corner, or by entering into a house, or other means, the prisoner may be out of view; And although he fly into another County, yet because the escape was of his own wrong, whereof he may not take advantage, the Sheriff upon fresh sure may take him there, and he shall be in execution. But if the Plaintiff bring his action against the Sheriff upon the escape, before that the Sheriff take him, or if the Sheriff doe not make fresh sure, yet in both these cases the Sheriff may take him and keep him in his custody, untill he make agreement with him, or he may have an action of the case, for his wrongful escape. And although the defendant be taken upon a *cap: ad satisfaciendum*, and escape, yet if the Writ be not returned and filed, the Plaintiff may have a new *cap: ad satisfaciend.* against him, and take him again, and he shall not take advantage of his own wrong. But if the Plaintiff will, he may charge the Sheriff with the escape, if he did not take him again in fresh sure before the action brought, and when the prisoner escapes of his own wrong, and be taken again, he shall never have an *audita querela* against the Sheriff. But it is otherwise if

if he escape with the consent of the Gaoler, then he may not take him again, and if he doe, then he may have an *audita querela*.

Resolved, that the barre was insufficient, for the Plaintiff counted of an escape in *London*, and the defendant justifies the retaking in *Devonshire*, so that the escape at *London* was not answered; but the Plaintiff not denying the fresh sute, but by Protestation relying upon this, that he was out of view, 'twas adjudged against him, but if he had demurred upon the barre, he should have had judgement.

Resolved, that after Demurrer, there shall not be a Repleader, for the parties by mutual consent have put themselves upon the judgement of the Court, and therefore without their consent, they cannot replead, and so several times adjudged.

Lincoln Colledge Case, 37 & 38 of the Queen, fo. 59.

Husband seised to him, and to his wife for life, and to the heirs of the body of the husband, dyed the issue, in the life of the wife, then tenant of the freehold (for so the pleading was) which shall be intended by disseisin, for no surrender, or forfeiture was alleged, 4 H. 8. suffered a recovery, with single voucher, by agreement, that the recoverors should infeoff L. &c. to divers uses, and that the wife should release to them with warranty, which was done according, 11 H. 8. The wife dyed, after the issue dyed; after his issue in the third degree entered; the question was, whether the collateral warranty should binde; the recovery did not come in question, for by the pleading it shall be intended, that he was seised by other title, than by the tail, so the single voucher not material.

Resolved, that though the first branch of the Statute

ture of 11 H. 7. says, that the warranty shall be void, yet the clause following (*and that it shall be lawful, &c. to enter*) being annexed to the first, expounds the generality of it, and though he to whom the interest, &c. after the death of the wife appertains, may avoid it by entry, yet, 'tis in force against all others; and so the Judges have expounded other Statutes, 8 H. 6. All Outlawries shall be void, except a *Capias* be awarded against the party, in the County, where, &c. yet this ought to be avoyded by error. The Statute of 1. of the Queen ordains that all grants, &c. by a Bishop, in other manner then, &c. shall be utterly voyd, but 32 and 33. of the Queen, betwixt Sale and the Bishop of C. and L. a grant of a next avoidance of a Church (not warranted, &c.) was not voydable against the Bishop himself, but only against his Successors. And with this resolution agrees 27 H. 8. upon the same Statute of 11 H. 7.

Resolved, that this warranty was out of the intent of the Act, which onely restrains warranty, which prejudices the heir in tail, or those in remainder, but when the warranty, &c. of the wife, is but for to perfect and corroborate the estate assured by the issue himself, &c. 'tis not restrained by the Act, for it shall be intended to the benefit of the heir, which is the reason, that a common recovery is not restrained, by *XX. 2.* for the intended recompence; and if the wife and the issue had joined in a fine, this had barred the tail, so, if the wife had surrendred, the issue might have suffered a recovery. *H. 39* of the Queen, the case was, that the younger Son Tenant in tail by devise, was vouched in a recovery suffered, by a woman tenant for life, by the same devise, and this was to the use of the vouchee and his heirs, who dyed; and 'twas adjudged that the Sister of the vouchee, by the intire blood shall have it, not the elder brother,

brother, & that the recovery was not within 14 of the Queen, though suffered by tenant for life; and the Statute says, that it shall be utterly void; for 'twas not the intent, that the Act should extend to a recovery, in which he in remainder in tail was vouched who had an estate that might continue for ever, and had the power to dock all the remainders: so here this Statute doth not extend to this warranty, because, &c.

Resolved, when the first issue disables himself, to take advantage of the forfeiture, and dies, his issue shall never take benefit of it, because, he was not *rerum natura*, nor had the immediate interest at the time; and this was Sir George Browne's case before where the issue in tail in the life of his Mother, tenant in special tail, levied a Fine without proclamations; and here, if error were in the recovery, the warranty Barres him of his action, because he himself by his own act, hath barred his entry. But here if the wife had released, &c. after the death of the issue, the issue might have avoyded the warranty.

Note; (Reader) it seems to me, if in such case a woman levies a Fine, or suffers a recovery, though the daughter enters, or not, and though she joyns the Fine, or is vouched in the recovery, or by any other act disables her self, yet the Sonne born after shall take advantage of it; for entry upon this Act 11 H. 7. is not like entry upon the Statute of 6 R. 2. c. 6. For there the daughter by expresse words, hath it as a perquisite, but upon 11 H. 7. *per formam doni*.

Resolved, if tenant in tail, in or another estate, suffer a common recovery, and a collateral ancestor, releases with warranty to the recoveror, after the recoveror makes a Feoffment to uses, which are executed by the Statute of 27 H. 8. and the ancestor dyes, though the estate be transferred in the post, before the descent

discent of the warranty, yet it shall bind; and the terre-tenant shall rebutt. See excellent learning upon this point, where an estate transferred in the *post*, before descent of the warranty, shall bind, where not, and where there shall be Rebutter in such case, where not,

Pennants Case, 38 of the Queen. fo. 64.

Lease for yeares upon condition, that the lessee shall not assign, &c. without assent of the lessor, he assigns, &c. the lessor not having notice of the assignment, accepts the rent due after, and enters; it was adjudged for the Lessor his entry lawfull; for that the condition being collaterall, the breach whereof may be so secretly contrived, that it is not possible for the lessor to have notice thereof, & notice in this case is materiall, and issuable; for otherwise the lessee might take advantage of his own fraud. But if a man make a Lease for years, rendering rent upon condition, if the rent be not paid to re-enter. In this case if the Lessor demand the rent, and the same is not paid, if after he accept the rent (before the re-entry made) due at another day, he hath dispensed with the condition, for there the condition is annexed to the rent, and he (having made demand of the rent) well knew the condition was broken; but although in this case, that he accept the rent, due at that day, for which he made the demand, yet he may re-enter, for as well before, as after his re-entry, he may have an action of debt, for the rent upon the contract between the Lessor and the Lessee.

If the lessor distrain for the rent for which the demand was made, he hath affirmed the Lease; for after the determination of the Lease, he may not distrain for rent.

It was also resolved, that as well in case of the condition

dition annexed to the rent, as in case of a condition annexed to any collaterall act, if the conclusion of the condition be, that then the lease for years shall be void, there no acceptance of the rent due at any day after the breach of the condition will make the void Lease good.

Resolved, that as a voidable Lease cannot be affirmed by word, for money, &c. so the acceptance of rent which is not *In esse*, nor due to him which accepts it, doth not affirm the Lease as a gift to a Husband and Wife, and to the heirs of the body of the Husband, the Husband dies, the issue accepts the rent of the Lessee of the Husband, during the life of the wife the Wife dies, yet the issue shall avoid the Lease, for no rent was due.

And there is a diversity between a Lease for life and for years, in case of a Lease for life, though the conclusion of the condition be, that it shall be void yet acceptance of a rent due before the breach, shall affirm it, for the freed-hold being created by livery cannot be determined before entry. If the successor accept the rent upon a Lease for years of a Parson, Vicar, Prebend, 'tis worth nothing, for 'tis void by death, otherwise of a Lease for life. But if the successor of a Bishop, Abbot, or Prior, accept the rent upon a Lease for years, he shall never avoid it, for 'twas voidable only.

Note (Reader) it seems to me, if upon a Lease for life, the Lessor accepts the same rent which was demanded, he hath affirmed the lease, for he cannot accept it, as due upon any contract, as upon a lease for years, for when he accepts it, he cannot have an action of debt for it, but his remedy was by assize, if he had seisin or by distresse, but after re-entry he may have an action of Debt.

If he that hath a rent service, or rent charge, accepts

cepts the rent due at the last day, and therefore makes an acquittance, all the arrerages due before, are thereby discharged, and so it hath been adjudged, in *Hopkins and Mortons Case*, 10. *El. Dyer*.

A man is not bound to pay an annuity without an acquittance, but a rent service, or rent-charge he is. If the Lord accepts, the rent or service of the Feoffee, he loses the arrerages in the time of the Feoffor, though he makes no acquittance, for, after such acceptance, he shall not avow upon the Feoffor at all, nor upon the Feoffee, but for the arrerages which incurred in his time; otherwise, where the Feoffor dies, and there is such an acceptance. But acceptance of rent or service by the hands of the Feoffee, shall not arre the Lord of relief due after, for that is no service, if it were, debt would not lye for it.

'Twas said, if the Lord accepts services by the hands of the heir, infeoffed within age by collusion, he loses the wardship. But against this 'twas objected. First, because the Lord upon tender of the arrerages, and notice, is compellable to avow upon him. Secondly, he cannot be concluded before title accrued. Answered, the Lord is not compellable, &c. for he may shew the collusion, and avow upon the Feoffor, and acceptance, the Lord waives the benefit of the Statute, purges the collusion, and loses the wardship.

Westbyes Case, 40 Eliz, in Banco Regis, fol. 71.

Westby brought an action of debt against *Skinner & Carter*, Sheriffs of *London*, for an escape. *One Buston* was in execution, and in their custody, at the suite of one *Dighton*, and at the Plaintiffs Suite, and at the end of their year, the Sheriffs deliver'd the body of *Buston* (amongst others) unto the new Sheriffs by Indenture, wherein the execution at the suite of *Dighton*, was mentioned, but the execution at

the sute of *westby* was omitted, and *Buston* still continued in the Gaol, and if the Defendants should be charged in this Case with the escape, was the Question? And it was adjudged, that they should be charged for although he was within the Walls of the Prison, yet that was an escape in Law, as to the Plaintiff. And it was resolved, that *Eo instanti*, that the ancient Sheriffs delivered their Prisoners to the new Sheriffs, the escape began as to the Plaintiff.

Note hereby, that the Law judgeth one that remains in the Gaol to have escaped, and it was resolved, that the ancient Sheriffs ought to give notice to the new Sheriffs of all executions that they have against any, that are in their custody, and it was resolved, untill the Prisoners be delivered to the new Sheriffs, they remain in the custody of the old Sheriffs. Notwithstanding the new Letters Patents, Writ of discharge, and the writ of delivery. And it was resolved, that if the old Sheriff die before a new one be made, the new Sheriff at his own perill ought to take notice of all executions against any of the Prisoners; and this is for necessity, and if one in Execution break the Gaol between the death of the old Sheriff, and the making of the new, this is no escape when the Sheriff is dead, all the prisoners are in the custody of the Law, untill the new Sheriff be made & although no fresh sute be made after, they may be taken in possession, in what place soever they come.

Dean and Chapter of Norwich Case, 40 and 41 of Queen, fo. 73.

H 8. An. 30. translated the Priory and convent of Cathedral Church of the holy trinity of Norwich into the Dean and Chapter, &c. and discharged them by their special names, *Tam de habitu quam de regimine ipsiusq; decanum & Capitulum, perpetuis temporibus*

corporavit, and granted them all the Manhore, &c. which of late belonged to the priory; & granted that they should be the Dean and Chapter of the Bishop of Norwich, and his Successors, after 2 E. 6. the Dean and Chapter, surrendered to the King their Church, and possessions, and he incorporated them by the name of the Dean and Chapter, *Sancta & individua unitatis Norw' ex fundatione*, E. 6. And regranted them their Church and possessions, by the name of the Dean, &c. omitting *ex fundatione Regis*. E. 6. Objected, that Herbert heretofore Bish. of Norwich was Founder, and being not party to the translation, is voyd. Answered, the King was Founder, as appears by any Records; and by the foundation; but, admit the Bishop Founder, yet the translation was good, for the Pope might have discharged a Monk of his profession, and therefore the King may do it, by the Statute of H. 8. And this translation is no prejudice to the Founder, for he remains Founder, & nothing is altered but the rule and profession; and this Prior was elected. 11. of the Queen. *Dyer. Corbets case*, proves this translation good, & by judgment of Parliament, H. 8. such translations are good. All Chapters were monks, & notwithstanding, their translations into Priests, or Cannons, the Advowson remains as before. I admit the translation void; yet, 'tis good by the Statute of 35. of the Queen, see the book at large. Objected, when they surrendered to E. 6. and he granted to them, by the mis-naming of the Corporation, for (*ex fundatione Regis* E. 6.) was omitted, grant was void, and nothing passed; for the name of the Founder is paycell of the Coporation. Answered, notwithstanding the Surrender of their Church; their Corporation continues; and they remain the Chapter of the Bishop; though there can-

not be a Gardian of Chapel, when the chapel
all the possessions are aliened. In Christian policy
thought necessary, (for that the Church could not
without Sects and Heresies) that every Bishop should
be assisted with a Counsel, viz. a Dean and Chapter.
1. To consult with them in deciding of difficult con-
troversies of Religion, to which purpose every Bishop
habet Cathedralam. 2. To consent to every grant the Bi-
shop shall make to bind his successors; for the Law-
did not judge it reasonable, to repose such confidence
in him alone; at first all the possessions were to the Bi-
shop, after a certain portion was assign'd to the Cha-
pter, therefore the Chapter was before they had
possessions, and of common right, the Bishop is Patron
of all the Prebends, because their possessions were de-
rived from him, so that so long as the Bishoprick con-
tinues, the Dean and Chapter (being his counsel) re-
mains, though they have no possessions, as at first they
were, when the Bishoprick consisted all of spirituals.
The Prior & Friars Carmelites had not any possession
nor place. And 32 H.8. Fitz held, if an Abbot or Pri-
or and covent, sell their possessions, yet their corporation
remains. All Bishopricks were at the foundation of
Kings of England, & ancient Donative by them; but
by grant of the Kings, became after Eligible by the
Chapter; wherefore, if by their surrender, their Cor-
poration should be dissolved; three inconveniences would
follow. First, to the Bishop, for his assistance in the
episcopal function. Secondly, to the Bishop and others
touching the confirmation of grants. Thirdly, to
the Church, for how should the Bishop be chosen?

Resolved, First, if there were any imperfection in
the Translation, the Statute of 35 of the Queen
made it good.

Secondly, that the act of 1 E.6. hath made it good
though the Corporation were gone by the surrender
and the misnamer materiall,

Hol

Holden by the Justices and Lord Keeper, that this
ancient Corporation remains, notwithstanding the
surrender. (which is now known to be void)

Fermors Case, 44 of the Queen, fo. 77. *Yardley*
Mish. Lessee for years of a House, and tenant at
will of Land, and Tenant by Copy of other Land
within the manor of S. to Fermor, leased all for life
to J. S. and also seised of other Land therein Fee, le-
ased a fine with Proclamations of all messuages, and
lands (which comprehend all those Leases, and also
the inheritance) by covin, to disinherit his lessor, and
after the fine, alwaies continues in possession, and pays
the severall rents to F. the Lessee for life, dyes, the
years expire, S. claims the inheritance.

Resolved, that the Lord of the Mannor was not bar-
red by the said fine. 1. The makers of the statute of
H. 7. never intended that a fine levied by Tenant
at will, years or Copy, which pretend no inheritance
or title to it, but intend the disinheritance of the Lord,
should bar them of their inheritance, and where
the Stat. saith (That fines ought to be of greatest strength
to avoid strife and debate.) This feoffment and fine by
the Lessee shall be the cause of strife where none was
before. 2. The statute doth not intend, that those who
make themselves without such fraud, could not levy a fine
to barre those which had the freehold & inheritance,
could be enabled to levy a fine by making of an estate
in another, by practice and fraud. 3. If doubt be con-
sidered upon an act of Parliament, 'tis to be construed
by the reason of the Common-law, & that so abhors
fraud, & covin, that all acts as well judicial, as others,
and which of themselves are lawful and just, yet being
mixt with fraud and deceit, are tortious and illegall.
As a woman intituled to have dower (which is favou-
red in Law) by covin, causes a stranger to disseise the

terretenant, to the intent to bring dower against him, and recovered accordingly, 'tis all void. So if a Female covert, or Infant (much favoured in Law) of covin, causes another to disseise the discontinuee, & infeoff them, they are not remitted. Sale in market overt shall not bind, if the Vendee had notice that the property was to another, or if the Sale be by Covin; the law hath ordained the common Bench as a Market overt for assuance of Land by fine; for it saith, *Finis finibus imponit*, yet covin shall avoid them. A *Vatit* was made in Banco of a recovery had by covin, 33, &c. 34. the Queen adjudged, where Tenant for life levied fine with Proclamations, and five years passed, and he died, that the Lessor shall have five years after his death, for though the Statute saves the right which first shall grow, and the right first accrued to the lessor by the forfeiture, yet because the Lessor by covin the Lessee, might be barred; for he expecteth no entry, till after the death of the Lessee, 'tis no bar, & namely, when the Lessee hath land of inheritance in the same Town; (as in this Case) so 'twas agreed in the same case, if the Feoffee of the Lessee for life hath Lands in the same town, & levies a fine, &c. the Lessor shall have five years after the death of the Lessee, for he knew not of what land the fine was levied (not being party to the Indenture or agreement). So, the Judges have construed the act against the Lessor, for salvation of the inheritance of him in reversion. And 'twas said, if the feoffee of a Lessee for years who made a feoffment by placcie, hath Land in the same Ville, and levy a fine, and the Lessee pays the rent to the Lessor, it shall not bind; and in the principall Case, the payment of the rent after the Fine makes the fraud apparent; for by this the lessor was secure, and not cause of any doubt of fraud.

But 'twas resolved, if the bargaine or feoffee of the Lessor perceiveth

perceiving that C. hath right, levyes a fine, or takes a fine of a Stranger, to the intent, to barre C. this fine levied by consent shall bind, for nothing was done in this, that was not lawfull, and the intent of the act was to avoid strife. So, if A. (pretending title) disseise B. and to the intent to barre the disseisee, levies a fine, for the disseisor, *Venit tanquam in arena*, & 'tis not possible but the disseisee had knowledge of it, & if he doth not enter, 'tis his folly. But in the Case at barre, every one will presume that the fine is levied of his own Land, because that he might lawfully do; and though this conteins more acres, than his own land, this is usuall almost in all fines; and the covin of the Lessee is the cause of non-claim of the Lessor, and a man shall not take advantage of his own covin; and here the fraud is the more odious, because of the great trust, *viz.* Fealty. To the objection, that it should be mischievous to avoyd fines, upon such nude averments, it was answered, that it should be a greater mischief, principally, if fines levied by such covin, should bind. And an averment of fraud may be taken by the statute of 27 of the Queen, against a fine levied to secret uses, by fraud, for to deceive purchasors. So by the statute of 13 of the Queen, an averment may be taken against a fine levied upon an usurious contract.

Twynes Case, 44 Eliz. in Cam. Stel. fo. 18.

An Information per Coke Attorney general against Twyne of Hampshire, for contriving and publishing of a fraudulent deed made of goods. The case upon the Statute 13 *Eliz.* was thus; Pierce was indebted unto Twyne, in 400l. and to one C. in 200l. C. brought an action of Debt against Pierce (and hanging the writ) Pierce being possessed of goods and chattels to the value of 300l. in secret made a deed of all his goods and chattels to Twyne, in satisfaction of his Debt, and yet

Pierce continued in possession of the same, and some of them he sold, and his Sheep he marked with his own mark, and after C. had judgement, and a *Fier. fac.* the Sheriff, & by vertue thereof Bayliffs came to make execution of the goods, & divers persons by the commandment of Twyne, with force resisted them, claiming them to be the goods of Twyne by vertue of the same deed, & whether this deed was fraudulent or no was the Question? & 'twas resolved by Sir Thomas Gerton Keeper of the great Seal of England, and by the chief Justices, Popham and Anderson, and all the Court of Star-chamber, that this deed was fraudulent, within the Statute of 13 El. And in this Case diverse things were resolved.

First, That this Deed had the marks of fraud, it was generall, and without exception of his apparel, or anything of necessity: for *dolus versatur in generalibus*.

Secondly, the Donor continueth in the possession.

Thirdly, It was made in secret, *Et dona clandestina semper sunt suspiciosa*.

Fourthly, It was made hanging the Writ.

Fifthly, There was trust between the parties, the Donor was in possession, and used them, and fraud is alwaies appalled with trust, and trust is the colour of fraud.

Sixthly, It was contained in the deed that it was honestly, truly & *bona fide*, *Et clause inconsuetæ semper indicant suspicionem*, & it was resolved, although it was a due debt to Twyne, and a good consideration of the deed, yet it was not within the proviso of the said Statute of 13 Eliz. By which it is provided that the said Statute doth not extend to any estate or interest in lands, goods & chattels made upon good consideration, and *Bona fide*, for although it be upon good and true consideration, yet it is not *Bona fide*, for no deed shall be deemed to be made *Bona fide* within the said proviso.

accompanied with any trust, for the Proviso saith
 upon good consideration, & *Bona fide*, so as good con-
 sideration doth not serve, if it be not also *Bona fide*.

Therefore (good Reader) if any deed be made to
 be in satisfaction of any debt, by one that is indebt-
 ed unto others also, First, let it be in publick manner
 before Neighbours. Secondly, valued by good men
 to a true value. Thirdly, take them out of the posses-
 sion of the Donor presently, for continuance of pos-
 session in the Donor is a mark of trust.

There are two considerations; *Viz.* Consideration
 of blood or nature, and valuable consideration; And
 one that is indebted to five several persons, every
 one 20 l. in consideration of natural affection, doth
 give all his goods unto his Son or Cosen. The intenti-
 on of the Statute was, that the consideration in this
 case should be valuable, for equity requires that this
 deed that defeats others, shall be made of as high a
 consideration, as the things are, that are so defeated
 thereby, for it is to be presumed, that the father, if he
 had not been indebted unto others, would not dispos-
 of himself of all his goods, and subject himself to
 a Cradle. And therefore it shall be intended that it
 shall not defeat his Creditors. And if a consideration of
 nature or blood, should be a good consideration with-
 out this Proviso, the Statute would serve for little or
 nothing, and no creditor should be sure of his Debt.
 A feoffment made solely in consideration of nature
 or blood, shall not take away the use raised upon va-
 luable consideration, but it shall take away a use rai-
 sed in consideration of nature, for both considerations
 are in *equali jure*, and of the same nature.

Many men marvell the reason that so many Acts
 and Statutes are daily made: this verse answereth.

Queritur ut crescunt tot magna volumina legis.

In promptu causa est crescit in orbe dolus.

And

And because fraud abounds in these daies, more than in former times, it was resolved, that all statutes made against fraud, shall be liberally expounded, to suppress the fraud, and according to this, see several resolutions in the book at large.

It was resolved, that no purchaser may avoid a precedent conveyance made by fraud, but he that purchases for money or other valuable consideration paid, for consideration of blood is a good consideration, but not such a consideration as is intended by Statute 27 El. c. 4. for valuable consideration is only good consideration by the same act. *Anderson* Chief Justice of the common bench said, That a man who of small capacity, and not able to govern his Land, that descends unto him, and being disposed to riot and disorder, by the mediation of his friends, by open conveyes his Land to them, upon trust and confidence, that he shall take the profits for his maintenance, that he shall have no power to waste or consume them, And after, he being seduced by deceitfull and covetous persons bargained for small sum his Lands of great value; this bargain, although it were for money, was holden to be out of the Statute, for this act was made against all fraud and deceit, & should not aid any purchaser that commeth not to the land of good considerations lawfully without fraud or deceit. And in this case *Twyne* was convicted of fraud and he, and all the other of ryor.

Resolutions. P. 44 of the Queen upon the Statutes of Fines, fo. 84.

A Tenant for life, the remainder to B. in tail, the remainder to B. and his heirs, B. levies a Fine hath issue and dies, before all the Proclamations passed, the issue then beyond the Sea, the Proclamations are made, the issue returns, and upon the last returns the remainder.

Re-

Resolved, that the estate which passed, was not determined by the death of tenant in tail; so, if Tenant in tail of a Rent, Advowson, Tythes, Common, &c. grants by deed, and dies; for if the issue brings a *Formedon* for the rent, he makes the grant voydable, if he distreyns, or claims it upon the Land, he by this determines his election. And there is no diversity, betwixt tenant in tail of a rent, &c. and tenant in tail of a reversion, or remainder upon an estate for life, though in the first Case, the issue may have a *Formedon* presently after the death of tenant in tail.

Holden by Popham, and divers other Justices, that the Statute of 32 H. 8. hath intoreed the case, that the estate which passes by the fine of tenant in tail, shall not be determined by his death, for by this 'tis provided that fines levied of any lands, &c. intailed, immediately after the Fine ingrossed, and Proclamations made, shall be a barre, if the Fine cannot be a barr without continuance, the Statute hath provided, that the Estate shall continue, for it provides for all necessary incidents to the perfection, & consummation of it. Every Fine shall be intended with proclamations, for 'tis most beneficial for the conusee, & all fines being the generall issue of land are levied according.

Resolved, that though by the death of tenant in tail a right to the estate tail descends to the issue, for that the tenant in tail dyed before all the Proclamations passed, yet, when they are passed without claim, this right is barred by the Statute of 32 H. 8.

Resolved, by all the Judges and Barons (but three) that the issue (in this case) being heir and privy, cannot, by any claim, save the right of the tail, which is descended to him, but that after the proclamation, he shall be barred; for, 'tis provided (that every Fine after the ingrossing of it, and Proclamation had and made, shall be a final end, and conclude as well privies as strangers.)

gers.) And if no saving had been, all strangers had been barred also, and all the exceptions extend only to Strangers; but the issue is privy.

To the objection; if by the equity of the Statute the issue cannot claim, &c. to what purpose are the Proclamations with such solemnities?

Answered, 32 H. 8. being an act of explanation of 4 H. 7. as to the fine by Tenant in tail, shall not be taken by any strained construction against the latter, for then 'tis requisite to have a new act of explanation, upon the explanation, & sic in infinitum. By H. 2. every one hath liberty to pursue a Fine according to the said Act, viz. with Proclamations, &c. without (as at common Law) and therefore the act of 32 H. 8. of necessity prescribes that Proclamation shall be made according to 4 H. 7. to distinguish from a fine at common Law, and not to inable the issue for to make claim, for this should be against the express intent of the act, in the Preamble, and purview. Also it should be very inconvenient, if, when such Fine is levied, for a valuable consideration, advancement of his issues, or payments of his debts, and he dies before Proclamations, that all should be voided by the claim of the heir, when the counsel could not have better assurance, by recovery, for that he was not tenant to the Precipe. See the Book large, in what case the issue in tail may averr seisin in a stranger, & *quod partes Finis nihil habuerunt* what not.

Objected, 1. 'tis provided by the statute *de donis*, &c. that as to the issue, *Finis ipso jure sit nullus*; 2. That the Statute of 27 E. 1. extends not to the heirs in tail as 8. H. 4. is, for the issue is not bound by any Record which inures by way of Estoppel. 3. 27. E. 1. speaks *De finibus ritè levatis*, and when there wants seisin (which is the essence of a fine) 'tis not *ritè levatus*. 46 E. 3. that 'tis a good Plea.

Ans

Answered, the statute *de donis, &c.* was made 13. 1. and the statute of fines, 27 in which the issue is not excepted, therefore he is bound, and according here is a good opinion, 8 H. 4.

To the second, though the issue was not barred of his right before, 4 H. 7. yet he was estopped to say, *Quod partes Finis nihil habuerunt.*

To the third, *Finis ritè levatus*, is intended in due form of Law, which it may be, though it be only by way of conclusion, for the same Act ousts the parties from such averment, and 46 E. 3. is to be intended of collateral ancestor, from whom the heir doth not claim the Land, and then the averment is good.

In *Conisbies Case* 'twas resolved, upon a Fine levied by tenant in tail in remainder, by tenant for life, and grant and render of a rent, that this was not within the statutes of 4 H. 7. or 32. H. 8. for the Fine was not of the land it self which was intailed, but of the rent newly created out of the land. And in the *Lord Mouches Case*, 'twas resolved, that 4 H. 7. and 32 H. 8. do extend to Fines levied by conclusion, and shall extend, though *partes, &c. nihil habuerunt*; as if tenant in tail makes a Feoffment, or be disseised, and levies a Fine, for the Statute says, (*All Fines of any lands, &c. any wise intailed to the person so levying, or to any of his ancestors*) and in 4 A. 7. the exception, *quod partes, &c. is saved to all persons not party, nor privy to the said Fine*, and the issue in tail is privy, for he claims as heir by descent, and if such Fine shall barre, where the tenant in tail had nothing, though the issue enter after the death of the ancestor, before all the Proclamations pass; *a fortiori* here, when tenant in tail, at the time was seised of an estate; though 'twere in reversion, See *Archers case*, where a Fine shall barre the issue, where the Father had only a possibility at the time of the Fine levied.

Purflowe;

Purflowes Case, 32 of the Queen, tenant in tail levies a Fine, Term. P. & T., and died in August next his daughter (being heir to the tail) & her husband brought a *Formedon*, and pending the plea, the proclamations passed, and 'twas agreed by the Court that the tenant shall plead the Fine, and the Proclamations which passed pending the Writ, and shall be to the Demandant; yet there the issue did all that might be done; for the conveyance is the Fine, and the proclamations are but a short repetition of the fine, of this, four things are to be observed. 1. Though after the fine, a right descends to the issue, yet, after Proclamations, the right is barred. 2. Though the plaintiff sues a *Formedon*, yet after proclamations, he is barred; *ergo*, in the principall case he is barred, notwithstanding his entry or claim *in pays*. 3. When tenant in tail levies a Fine, and dies, before proclamations, the issue is not within any of the *savings*, for then the bringing of a *Formedon* should avoid the bar. 4. The proclamations serve for no purpose, but to distinguish the Fine, from a Fine at the common Law. *Trin. 4. of Queen Bendlowes*, tenant in tail, disseised the disseisee, and levied a fine, and took an estate by remainder, the disseisee enters, and claims, before all Proclamations passed, and avoids the estate, after Proclamations pass, tenant in tail continues his possession, and dies within the year, after the entry and claim. Resolved, that the issue was not remitted, but barred by 32 H. 1. Though the estate was avoided before all the proclamations passed.

Resolved, though the issue be beyond the Sea, yet because he is privy, &c. he is bound, as if he were within age, covert, or *non compos*. Which was agreed by all the Justices: *Ergo*, the claim of the issue is not materiall, and if infancy, &c. should avoid the fine, no man should be assured of land conveyed.

THE FOURTH BOOK.

Vernons Case. 14 & 15 of the
Queen, fo. 1.

I

IN dower, the tenant shews that the husband made a feoffment of other Land to the use of himself for life, and after to the use of the demandant for life, &c. and avers that the said estate was for her Joynture, &c. and that the Demandant had entered, &c. and agreed to the Estate; the Demandant shews that the estate was upon condition, for perform the will of the Husband, and that divers things were to be performed in it, judgement if the tenant shall be admitted, &c.

Resolved, that at Common Law, a right or title to Freehold, cannot be barred by acceptance of a collateral satisfaction, or recompence. As if a disseisor of the Mannor of P. gives to the Disseisee the mannor of S. in satisfaction of all his right, &c. And therefore it is said in our Books, that an accord with satisfaction is a good Plea in a personal action, where damages are to be recovered, not in a real; and therefore no bar in Dower, but Dower *ad ostium Ecclesie*, or *ex consensu patris*, concludes her, if she enters after, &c. for the Law allows them, &c. to be dowers in Law. before 27, most lands were in use, and because wives were not dowable of the use, estates were made by Feoffees, to the husband and his wife, before, or after

96
after the marriage for life, &c. for a competent provision for the wife; then 27 transferred the possession to the use, and if further provision had not been made the wives should have their dowers and jointures as before: so: and therefore those branches were made in the same Statute of 27.

Resolved, that the Feoffment to the use of himself for life, the remainder to his wife for life, for jointure of the wife, is within 27. for though the five estates only are expressed. 1. To the husband and wife, and the heirs of the husband, &c. 2. To the heirs of their two bodies. 3. Of the body of one of them; 4. For their lives. 5. To the husband and wife for life of the wife, yet, many other estates are within the act, for these are put for example, nor conclude others: But resolved, that no estate is a jointure, except it takes beginning presently after the death of the husband; for so, are all the examples, and therefore to himself for life, the remainder to B. for life, the remainder to his wife, &c. is not within the Statute, &c. and therefore though the wife enter, and takes the profits, she shall have Dower. An estate to one and his wife, and the Heirs male of their two bodies, adjudged a good jointure, none of the five estates mentioned; an estate made to a woman for life, before marriage, adjudged a good jointure.

Resolved, though the estate here were upon condition, and though Dower (in place of which jointure comes) were absolute, yet because an estate for life upon condition, is an estate for life, 'tis within the words, and the intent of the act, if the wife accept it, &c.

Resolved, that a wife cannot waive a jointure made before the coverture, as she may a jointure made after; and this by the *Proviso* (if any woman hath land

assured after marriage for her life, &c. after death
the husband she hath liberty to refuse, &c.) and
therefore the intent of the Statute, was, that she
could not refuse a joynture made before, and land
conveyed for part of her joynture, or in satisfaction
part of her Dower, is no bar of any part, for the
certainty; for the Statute says, for the joynture of
the wives, and not for part of the joynture.

Resolved, that though the estate of the wife be upon
an expresse condition, for to perform the will,
which imports a consideration of making the estate,
it may be averred for joynture, for the one con-
sideration well stands with the other, and though it
is not expressed in the Deed, yet it may be averred &
the case is the stronger, because the averment is
made by the words of the act. And a Fee-simple to
a wife, in satisfaction of her dower, is a joynture
within the equity of 27. for the reasons aforesaid, as
because 'tis within the expresse words (*for term
of life, or otherwise*) for all estates as beneficial, &c.
& are within, by this word *otherwise in joynture*,
where judgment was given against the demandant.
And devise to a wife for a life, in tail, &c. for her
joynture, is a good joynture within 27. as 'twas re-
minded in *Leake and Randals Case*. Otherwise, where a
man devises to his wife for life, &c. generally this can-
not be averred to be for joynture, and therefore no
good Dower. 1 Because a devise imports a conside-
ration in it self, and shall be taken as a benevolence.
2 Because the will for land by 32 & 34 H. 8. ought to be
in writing, and no averment ought to be taken out of
the will, which cannot be collected by the words
within; an estate before marriage is within the equi-
ty of the Statute; so an estate by devise, which takes
effect after the marriage dissolved is within 27.

Bevills Case, 27 & 28 of the Queen. fo. 8.

TENANT by Homage, Fealty, and Escuage, and to Court twice a year; the Lord was seised the Fealty only by the hands of the Tenant. Resolved, that seisin of Fealty, was a seisin of all the services; for when the tenant doth fealty, he takes corporal oath, that he shall be faithfull and true to the Lord, and shall bear him faith of the tenement which he claims to hold of him, and that he shall lawfully do the customes and services, &c. though Homage be more honourable, and the humble service, that a Freeholder can do to his Lord yet, Fealty is the more sacred service, for this is done upon oath, not the other. And the words (*shall be faithfull and true*) are also parcel of Homage; Seisin of any part of any service, is a Seisin of the whole, and the Law, for this reason, so respects all services, that no distresse for them shall be executed, and though distresse be so often, that the tenant cannot manure his land, he shall not have an Affize for rent, or other profits.

Resolved, that seisin of a superior service, is a seisin of all inferior services incident to it, as a seisin of escuage, of homage and fealty; homage of fealty, of fealty, where the Seigniorie is by fealty, and so forth. Resolved, that doing of homage, is a seisin of all services, inferior and superior, because he takes upon himself to do all services. Resolved, that seisin of a fute, or of other annual service, is seisin of all services, homage, fealty, ward, relief, heriot service, &c. for to cover the hall of the chief house of a Mannor, for to impale the Barke of the Lord, for such casual services, which perchance will not last sixty years, but seisin of one annual service is

feisin of another annuall service, as rent, of sute nor of work daies, for 'tis the folly of the Lord, that he retained not feisin, and it shold be mischievous to the tenant, for perhaps in ancient time the work dayes were discharged, which now cannot be shewn.

Note (Reader) all this is to be intended of a feisin in Law, for feisin of fealty here, is no actual feisin of homage, nor of sute, nor fealty of rent, but feisin of any part of a service is an actuall feisin of all to have an assize. And as to make a vowry feisin in Law suffices; but as for an assize actuall feisin is requisite; in a writ of right of Land. See the book at large, and there, where ancient feisin to an estate is altered, changed from one person to another, shall be sufficient where not.

Resolved, that feisin in Law was sufficient to make a vowry within the letter, and the intent of the statute of 32 H. 8. for the intent was to limit a time, within which, feisin ought to be had, not to exclude any feisin, which was a lawfull feisin by the common law, which appears by the preamble. Also, the later acts of limitation as *W. 1. ca. 38. W. 2. ca. 2.* do not exclude a feisin sufficient at Common Law, and the Statute saith, (*Actual possession or feisin*) which is either actuall or in Law.

Resolved, that the act doth not extend to such a lease or service, which by common possibility cannot happen within sixty years, as homage, fealty, for the Tenant may live beyond, or to cover the Hall, or to do in war, so of a *Formedon in Descender*, for Tenant in tail may live sixty years, after discontinuance, and though *In fact* he dyes, and the issue doth not pursue his *Formedon*, yet, he may have it at any time, and the feisin of the donee was not traversable, so of homage and other casuall services, though the Lord ought have had feisin. So, if the Lord release to the

tenant, so long as I. S. hath heirs of his body, though sixty years passe, yet he may distrain, for *impotent excusat legem*, and there may be a tenure by homage &c. and yet never done, as if the Land be conveyed to a Maior, &c. or other Corporation aggregate many, they hold by fealty, yet they cannot do. A Writ of Escheat, *Cessavit*, *Rescous*, are not within the Act, for in them the seisin is not traversable, in the tenure, and in the Escheat and *Cessavit*, they demand the Land and can lay no seisin, and the act extends only to those Writs where the Demandant shows his Ancestors might have had seisin. So, Note, Land shall escheat, though there be no seisin of the services, within the time of limitation, for the Seignior remains, though seisin wants; so if the Tenant dies, and the Land be not over tithes, and sufficient to his distress, the Lord shall have a *Cessavit* though he want seisin of the services. Resolved, if nothing be agreed, and the Lord distrains, the Tenant may make *rescous*, or if he be so often distrained, that he cannot manure his Land, he may have an assize, *De seisin distrains*, but for such tortious distress where none is arrear, the Tenant shall not have Trespass, *Per armis* against the Lord, for this is prohibited by the statute of *Marleborgh* ca^o 3. See the Book at large what case an incroachment of more rent by the Tenant than he ought to have, shall be avoyded, in the next mor.

Resolved, that though a man hath been out of possession of Land by sixty years, yet if his entry is not taken away, he may enter, & bring any possession action of his own possession, for the first clause does not bar any right, but prohibits that none shall have a Writ of right, &c. of the Possession of his ancestors, &c. but only of a seisin within sixty years. The first and second clause extend only to seisin and *cessavit*.

cestrell, the third to an action of his own possession, not to entry, the fourth by avowry, the fifth to a For-
medon, &c.

Note (Reader) out of this, that when the tenant hath done homage and fealty, which the Lord may enforce him to do, this shall be a seisin of all other services, as to avowry, though the Lord nor those by whom he claims had seisin within sixty years.

Actions of Slander.

The Lord Cromwells Case, 20 of the Queen, fo. 12.

THE Lord Cromwell brought an action *De scandalis magnanum*, against D. Vicar, *Tam pro domina regina quam pro seipso*, upon the statute of 2 R. 2. ca. 5. The Defendant said to the Plaintiff, *It is no marvell though you like not of me, for you like of those that maintain sedition against the Queens proceedings*, the Defendant justifies specially, that he being Vicar of N. the Plaintiff procured I. T. and I. H. for to preach there, who in their Sermons inveigh against the Book of Common prayer, and affirmed it to be superstitious; upon which the Vicar inhibited them, for they had not license nor authority to preach; yet they proceeded by the encouragement of the Plaintiff; and the Plaintiff said to the Defendant, *Thou art a false Varlet, I like not of thee*, to whom the Defendant said, *It is no marvel though you like not of me, for you like of those inuendo*, the aforesaid I. T. and I. H.) that maintain sedition (*inuendo seditiosam illam doctrinam*) against the Queens proceedings.

Resolved in this case, that the Statute aforesaid concerning the King, the Judges *Ex officio*, ought to take notice of it, as they ought of all Statutes that concern him,

H 3

Re-

Resolved, that the justification is good, for in case of slander, the sence of the words is to be taken, which may appear by the occasion of speech. *Sensus verborum ex causa dicendi accipiendus est, & sermones semper accipiendi sunt secundum subjectam materiam.* And here the sence of the words appears, and his meaning in speaking them, and that he did not intend any publique or violent sedition, as the word of it seems imports; and God defend, that the words of one by a strict and grammaticall construction, should be taken contrary to the manifest intent; as in an Action for calling the Plaintiff murderer, 'tis a good justification that the Plaintiff confessing that he had killed divers hares with Engines, the Defendant said *Thou art a murderer*, and the Defendant shall not be put to a general issue, when he confesses the words and shews that they are not actionable, as in maintenance the Defendant may justify lawfull maintenance, whereupon the Plaintiff replied that the Defendant, *dixit, &c. Verba prædict. de injuria sua propriaq; tali causa*, upon this they were at issue, and agreed.

Cutler and Dixons Case, 27 and 28 of the Queen,
14.

IF one exhibit certain Articles, to a Justice of Peace, against one, declaring divers great abuses and misdemeanours, &c. to the intent to bind him to the good behaviour; In this case the party accused shall not have any action upon the case, for it is in pursute of ordinary justice, and if such actions were permitted none would complain for fear of infinite vexation.

Sir Richard Buckley and woods Case, 33. and 34. of the Queen, fo. 14.

Wood exhibited a Bill in the Star-Chamber against Sir R. B. and charged him with divers matters examinable there, and with other matters not determinable there, as that he was a maintainer of Pirates and Murtherers, and a procurer of Piracies, upon which Sir R. B. brought his action, &c. Resolved, that no action lyes for matter examinable there, though 'twas meerly false, because that 'twas in course of justice.

Resolved, that an action lyes for these words, not examinable there, for 'tis not done in course of Justice, and great inconvenience would follow, if matters may be inserted in Bills exhibited in so high and honourable a Court in Slander of the parties, and they cannot answer there for their purgation, nor have their action for purging themselves of the crimes, and recover damages for the wrong, but that the said Bill shall remain alwayes of record to their infamy, & here no murther or Piracy can be punished upon any Bill exhibited in English, for he ought to have been indicted, and therefore he hath not only mistaken the Court, but also the nature of exhibiting the Bill, hath not appearance of any ordinary course of justice, but no action lies upon an appeal of murder, returnable in the *Common Bench*, for though the Writ is not returned before competent Judges, who may do justice, yet 'tis in nature of a lawfull Sure, namely, by Writ of appeal, wherefore judgement was given for the Plaintiff. And in a Writ of error in the Chequer Chamber brought by wood, 'twas resolved, that Sir R. B. might have had a good action, but here, because the action was got up-

on the Bill exhibited at *westminster*, but because he said in the Country of S. that his Bill was true, *in auditu quamplurimorum*, without expressing the said matters in particular, so that it was not any Slander, Judgement was reversed.

Stanhop and Bliths Case, 27 of the Queen, fo. 15.

M After *Stanhop* (who was a surveyor of the Duchy, and had divers Offices, and was a Justice of Peace) Hath but one Mannor, and that he hath gotten by swearing, and forswearing. Resolved that the Action doth not lie, for they are too general, and words which charge any one, in an action in which damages shall be recovered, ought to have convenient certainty; and he doth not charge the Plaintiff with swearing, &c. and he may recover a Mannor by swearing, &c. yet not procuring or assenting to it. Resolved that one charge another that he hath forsworn himself, no action lies. First, because he may be so sworn in usual communication, *Quia benignior sensus in verbis generalibus seu dubiis est preferenda*. Secondly, it is an usual word of passion and choler, also to call another a Villain, a Rogue, a Varlet, these and such like will not maintain action, *Beneficentia iudicis interest, lites dirimere*. But if one say to another, that he is perjured, or that he hath forsworn himself in such a Court, &c. For these words an Action will lie.

*Hext Justice of Peace against Teomans,
27. of the Queen, fo. 15.*

F Or my ground in H. Hext seeks my life, and if I could find one I. H. I do not doubt, but within two days, to arrest Hext for suspicion of Felony. Adjudged that no action

tion lyes for the first words; 1. Because he may seek his life lawfully upon just cause, & his land may be holden of him. 2. 'Tis too general, and the Law afflicts no punishment for seeking of his life; but adjudged that the action lyes for the last words; for, for suspicion of felony, he shall be imprisoned, and his life in question.

Birchleys case, 27 and 28 of the Queen, fol. 16.

The Defendant said to B. (Clerk of the Kings Bench, and sworn to deal duely without corruption) you are well known to be a corrupt man, and to act corruptly. Adjudged that the action lyes; 1. Because the words, *Ex causa dicendi*, imply that he hath dealt corruptly in his profession, *Et sermo relatus ad personam intelligi debet de conduione personæ*; 2. This touches the Plaintiff in his oath; 3. The words scandalize him in the duty of his profession, by which he loses his living. Skinner of London said, that Manwood said as a corrupt Judge; adjudged actionable. Resolved in this case, that if the precedent parlance had been, that B. was a Usurer, or executor of another, and could not perform the will, and upon this the Defendant had spoken the words following, no action could lye.

Weaver and Caridens case, 37 of the Queen, fo. 16.

Adjudged, that no action lyes, for saying that the Plaintiff was detected for perjury in the Star Chamber; for an honest man may be detected, but not convicted.

Stuckley

Stuckley and Bulheads case, 44. and 45, of the Queen, fo. 16.

ADjudged, that an action lies for saying, Master (he was a Justice of Peace) covereth and hideth felonies, and is not worthy to be a Justice of Peace, this is against his Oath, and his office, and a good cause to put him out of commission, and for that he may be indicted and fined.

Snagg and Gees case, 39 of the Queen, fo. 16.

THou hast killed my wife, and art a Traytor. Adjudged that the action will not lye, for the wife was in the bed as appeared in the Declaration, and so the wife was not dead, vain and no scandal, otherwise if she had been dead.

Eaton and Allens Case, 40 of the Queen, fo. 16.

HE is a brabler and a quarreller, for he gave his Champion counsel to make a Deed of gift of his goods to me, & then to fly out of the Country, but God preserved me. Resolved, that the action will not lie, for the punishment without act is not punishable, and though he may be punished for such conspiracy in the Star-chamber yet this is by the absolute power of the Court, not by the ordinary course of Law. Observe well this case, and the cause and reason of this judgment.

Anne Davies Case, 35. of the Queen, fo. 16.

THe Defendant said to B. (a Tutor to the Plaintiff) and with whom there was near an agreement of marriage) I know Davies daughter well, she did dwell

Cheapside

Peapode and a Grocer did get her with Child; and the Plaintiff declared, that by reason thereof, the said B. refused to take her to wife.

Resolved, the action lies, for a woman is punishable for a Bastard, by 18 of the Queen, ca. 3. And though that fornication, &c. is not examinable by our law, because done in secret, and uncomly openly to be examined, yet the having a Bastard is apparent, and examinable by the said Act.

Resolved, if the Plaintiff had been charged with inde incontinency only, the action lies, for the ground of the action is temporall, viz. the defeating of her advancement in marriage, By Popham an action lies, for saying that a woman Inholder, had a great infectious disease, by which she loses her guests. *Ba- nister and Banisters Case.* 25 of the Queen. Resolved, that an action lies, for saying the Sonne and heir, that he was a Bastard, for this tends to his disherison; but resolved, if the Defendant pretend that the Plaintiff is a Bastard, and he himself right heir, no action lies, and this the Defendant may shew by way of bar.

James Case. 41 and 42 of the Queen, fo. 17.

The Defendant said to B. *Hang him (innuendo prædict. 1) he is full of the Pox (Innuendo the French Pox) &c.* Resolved, two things are requisite to have an action for slander. 1. That the person scandalized be certain. 2. That the scandal be apparent by the words themselves. And therefore if a man says, that one of the servants of B. is a notorious felon or traitor, an action lies not (if he have more servants) and (innuendo) cannot make it certain. So, I know one near about B. that is a notorious Thief. But if two speak of B. and the one says, he is a notorious Thief, an action lies,

lyes, and B. may reduce this to a certainty by (*innuendo prædict. B.*) for the office of an *innuendo* for to design the person that was named in certificate before, and in effect, stands in place of (*præd.*) *innuendo* cannot make that certain which was certain before, and subject to a deceiveable construction. But if one sayes to B. *Thou art a traitor*, an action lies, for *constat de persona*. So here, when two of the Plaintiff, and one sayes, *Hang him*, there *innuendo* will denote the person, but *innuendo* cannot extend for to make the intent to be the French person by imagination, which is not apparent by the precedent words; and the words themselves shall be taken in *mitiori sensu*.

Oxford and his wife against Crosse, 41 of the Queen, fo. 18.

THE Plaintiff brought an action in London, for libelling the wife of the Plaintiff *whore*; the Defendant removed this out of London by *habeas corpus procedendo* was prayed, because the action was maintainable in London, though not at Common Law, denied by the Court, for such custome to maintain an action for brabbling words, is against Law.

Sir G. Gerard Master of the Rolls against Mary Dickinson, 32 & 33. of the Queen, fo. 18.

THE Plaintiff counts that he was in communication with R. E. for to demise to him the Mannor &c. The Defendant said (*Præmissorum non ignorans*) I have a lease of 90 years of the Mannor, and then she sold and published a Demise made by the Lord Audley grandfather of the Lord A. from whom the Plaintiff claims, where in truth the Defendant knew this

the counterfeit, by reason of which, &c. R. E. did not proceed, &c. The Defendant pleaded, *Quod talis Indentura* (qualis in the count) came to his hands by conveyance, and traversed, that he knew of the forgery.

Resolved, if the defendant affirm and publish that the Plaintiff had not right, but that she her self had, no action lyes, though she hath no right, because she pretends title, for if an action should lie, how could any one claim or sue, or seek counsel for any land & matters case before resolved according, and therefore it was here resolved, that no action lies for saying, *I gave a lease*, &c. though it be false. And though it appears by the Barre, that she had no title, but is a stranger, yet, because the matter in the count doth not maintain the action, the bar shall not make it good.

Resolved, that there was other matter in the count sufficient to maintain the action, *viz.* That the Defendant knew of the communication, and that the lease was forged, and yet published, by which, the Plaintiff lost his bargain.

Resolved, that the bar was insufficient, for the knowledge of the Defendant or forgery, is not traversable; as in an action, for that the Dogge of the Defendant had bit the beasts of the Plaintiff, *Ipse sciens canem suum mordendas oves consuetum*. (*Sciens*) is not traversable, but it ought to be proved upon the general issue, for (*sciens*) is not a direct allegation, nor alleged in any place. And *talis indentura, qualis*, is no direct answer to the Indenture mentioned in the count, for *qualis, non est eadem*, and no *simile est idem*.

Barhams Case, 44 & 45 of the Queen, fo. 20.

After Barham did burn my barn (innuendo a barn with corn) with his own hands, and none but he!

Moved

Moved in arrest of judgement that the words are not actionable, for 'tis not felony to burn a barn, if it be not parcell of a mansion house, or full of goods, and in such case *agitur civiliter*, not criminaliter, *verba accipienda sunt in mitiori sensu*. And the *innuendo* will not serve, when the words are not slanderous.

Britteridges Case, 44 & 45 of the Queen, so.

B Is a perjured old knave, and that is to be proved. *Take parting the Land of A. and B.* Resolved, that the action lies for the first words. And adjectives will maintain an action, when they prove an act committed (as here) or when they scandalize a man in his office, or function, or trade by which he acquires his living. *Philips*, Batchelor of Divinity brought an action against *B.* for saying, *Thou hast preached a seditious Sermon, and moved the people to sedition this day*; adjudged the action lies, because though the first part of the words were merely adjective, they scandalized him in his function. So, if a man say of a Merchant, that he is a *bankruptly knave*, or a *bankrupt knave*, as 'twas adjudged in *Mittons case*, or that he will be a *bankrupt* within two daies; but an action lies not when these adjective words import not a deed done, but an inclination, which doth not scandalize in function, &c.

Resolved, in the case at barre, that upon all the words together, no action lies, for the last words plain his intent to be, of no judiciall perjury. 'Tis not possible that a stake can prove a man perjured; as it hath been adjudged; *Thou art a Thief, thou hast stolen my apples out of my Orchard; or robbed my Hop-ground*, *Dobbins and Franklins case, 43. & 44. of the Queen*, but if the counsel of the Plaintiff had closed the truth of the case in the count, an action

would lye, for in truth, there was a controversie between two, whether the stake stood upon the land of the one, or the other, or as an indifferent boundary, and the Plaintiff was deposed in an action for this, as a witness; and by the pretence of the Defendant had perjured himself in his Deposition.

*Palmer and Thorpes Case, 25. of the Queen, fo. 20.
touching defamation in the Ecclesiastical Court.*

Resolved, that such defamation ought to have three incidents. 1. That the matter be meerly Spiritual, and determinable in the Ecclesiastical Court, as calling Heretique, Schismaticque, Advowterer, fornicator. 2. It ought to concern matter meerly spiritual only, for if it concern any thing determinable at common Law, the Ecclesiastical Judge shall not have consueance of it. See for this 22 E. 4. 20. the Abbot of St. Albans case. 3. Though the thing be meerly spiritual, yet he which is defamed cannot sue there for amends or damages, but the sute there ought to be onely for punishment of the offender, *salute anime*. For this, see *Articulis cleri*, & *circumspecte agatis*, & Fitz. 51, 52, 53. But the Plaintiff shall recover costs there, and there if the Defendant redeem his penance, agree to pay a certain summe, the party may sue for this there, and no Prohibition lyes.

Copy-hold Cases.

Browns Case, 23 & 24. of the Queen, fo. 21.

Copy-holder in fee, by licence, leases for years, and dyes, the eldest Sonne dyes before admittance,

rance; adjudged that the daughter of the intire blood shall have it, not the younger sonne. Resolved, though a Copy-holder, in judgement of Law, hath but an estate at will, yet custom hath so established and fixed his estate, that by the custom of the Mannor 'tis descendable to his heirs, and is not meerly *ad voluntatem Domini*, but, &c. *secundum consuetudinem manerii*; the custom is the soul and life of Copy-holds. See the book at large, of what antiquity Copy-holds are, and some general learning concerning them.

Resolved, when custom hath created such inheritances, the Law shall direct the descent according to the Maximies and rules of the common Law, as incident to every estate descendable. When uses have gained a reputation of inheritances, the Law directs the descent, & of them there shall be a *possessio fratrum*. But Resolved, that such customary inheritances shall not have any collateral qualities, which do not concern descent of inheritance, which other inheritances have; and therefore they shall not be affected by the heir; upon an obligation, nor there shall not be Dower, nor tenancy by the curtesie, nor a descent shall toll entry, &c. For, as without custom they cannot descend, so without custom, they cannot have a collateral quality; for Copy-holders have inheritances *secundum quid*, viz. to descend to the heirs, and not to be determined by the will of the Lord, *simpliciter*, to a collateral quality.

Resolved, that the heir, before admittance, may take the profits, and may surrender to the use of another, before admittance; but this shall not prejudice the Lord for his fine upon the descent, and he shall be tenant by Copy of Court-roll, for the roll made by his ancestor belongs to him, and admittance of a tenant for life shall serve for the remainder, yet, it shall not prejudice the Lord for his Fine. And that

It was objected, that every admittance amounts to a grant, and so may be pleaded, and therefore nothing veils before admittance, yet, it was resolved, that, as after admittance, the heir may in pleading allege this is a grant, and this to avoid inconveniences for, if he should be compelled to shew the first grant, it was before time of memory, and so not pleadable, or if within memory, then the custome fails, yet he may allege the admittance of his Auncestor, as a grant, and shew the descent to him, and that he entered, and this without admittance, but he cannot plead, that his Father was seized, &c. by Copy, &c. and died seized, and that this descended, &c. For in truth, 'tis but a particular estate at will in judgment of Law, though descendable by custome.

Ryrets Case, 24 of the Queen, fo. 22.

Greed, that a Husband shall not be tenant by the Curtilie of a Copy-hold, without special custome.

Deale and Rigdens Case, 36 of the Queen fo. 23.

Judged, that if a recovery be in plaint in nature of a real action, against tenant in tail (admitting Copy-hold may be intailed) that this is a discontinuance, for, in as much as plaints are warranted by some, 'tis incident, that it should make a discontinuance. The like judgement was between, *Clun and Pease*.

Bullock and Dibleys Case, 35 of the Queen, fo. 23.

Resolved, that a surrender by the husband is no discontinuance to the Wife, nor her heirs. And if a

Copyholder for life surrender to the use of another in fee, this is no forfeiture, for it doth not pass livery. And Copyholders have not such quality without speciall custome; so also adjudged in severall cases.

Gravenor and Teds Case. 35 of the Queen. fo. 23.

Resolved, that the descent of a Copyhold, doth toll entry, and that where the custome was, he may grant in fee simple, that he may, by the custome, grant to a man and the Heirs of his body for ever, if it be a fee simple conditionall, or a rail, 'tis within the custome, so of a grant for life, or years in fee simple includes them.

Finch and Huckleys Case. 36 of the Queen, fo. 24.

Resolved, that admittance of a Copyholder for life is an admittance of him in remainder, but not to prejudice the Lord for his Fine. And that upon surrender, to the use of himself for life, and after the use of his last will, that the fee remains in the Copyholder, not in the Lord.

Clark and Pennifather's case. 26 of the Queen, fo. 25.

Resolved, that the Heir of a Copyholder may sue for trespass, before admission, and the Heir (as the principal case was) dye before admission, his Heir may take the profits, and have trespass. And VVray said, that 'twas adjudged, that there be *possessio fratris* of it. Resolved, that where a Mannor was granted to the Queen for life, the Queen was a sole person exempted by common law, and may make a lease, or grant, without the King's licence.

may plead and be impleaded: and that 32 H. 8. is but a Declaration of the Common Law.

Adjudged that a grant of a Copy-hold in fee, escheated to her, by the Queen Tenant for life, binds the King his Heirs and Successors, for she was *domina pro tempore*, and the custom of the Mannor binds the King. And that every one, who hath a lawful interest in a Mannor, &c. though but at will, may grant Copy-holds, escheated, &c. rendring the ancient rent, Customes and services, and this shall bind the Lord, for, he is *dominus pro tempore*. For a Copyholder derives not his interest out of the estate of the Lord only, but out of the custome, and the grantee is in by that, without regard to the estate or Person of the grantor; and therefore such a grant by the Husband shall bind the wife; so, of Infants, *non compos mentis*, Bishop, Prebend, Parson, shall bind for ever, for the custome is, that the Tenements are parcel of the Mannor, and demised and demisable, &c. But the Lord must have a lawfull estate; for, if a disseisor, or feoffee of a disseisor, &c. makes such grants, this shall not bind him that hath right, after a re-continuance of the Mannor; But admittance by such upon a surrender, or of the Heir shall bind, &c. for they are lawfull, & *quodam modo* judiciall acts, which to do, he may be compelled in a Court of equity

P. 26 of the Queen fo. 24.

Adjudged, if a Lord takes wife, and a Copy-holder for life (according to the custome) dies, and the Lord re-grants for lives, and dies, that the wife, in Dower, shall not avoid these grants, for though the grant were after the title of Dower, yet, the custome was before. If a Feoffee upon condition, makes a voluntary grant, the condition is broken, the Feoffor, &c. ceters, the grant shall stand.

Rous and Arters Case, 33 of the Queen, fo. 34.

ADjudged that if Tenant *pur auter vie*, of a mannor after the death of *cestuy que vie*, continues in, and holds Couris, and makes voluntary grants, this shall not bind the Lessor, (otherwise the admittances upon surrenders, or descents) for he was tenant at sufferance, who hath no lawfull interest, and a writ of *entry ad terminum qui preterit* lies against him, and so is a desorccor.

Murrell and Smiths Case, 33 and 34 of the Queen, fo. 24.

THe Queen grants a Copy-hold in fee, and grants the inheritance of the Copy-hold to a stranger; the Copy-holder devises to M. and after surrenders to the use of his will. Resolved, that custom hath so established the estate of a Copy-holder, that by severance of the inheritance of the Copy-hold from the Mannor, the Copy-hold is not destroyed, for, being the Lord himself could not ouste the Copy-holders, no more can another claiming in by him. Objected, that every Copy-hold ought to be parcel of the Mannor; and to be demised, or demisable, out of memory. Resolved, that because once this both the incidents aforesaid, and its perfection, the severance made by the Lord, shall not destroy it.

Resolved, that notwithstanding the surrender, and devise, the Copy-hold descended to the heir, for after the severance of the inheritance, from the Mannor, the surrender was utterly void, for, the land was not parcell of the Mannor at the time, and the devise only cannot transference such a customary estate, but it ought to be by surrender into the hands of the Lord, &c.

Resolved

Resolved, that after severance, the Copy-holder shall pay his rent to the Feoffee, and shall pay, and do other servises which are due, without admittance or holding of a Court, as to plough the demans of the Lord, Heriot, &c, but suit of Court, and fine upon alienation or admittance, are gone, for now the land cannot be alienated, for though the Copyholder hath some benefit by the severance, as appears before, so he hath great prejudice, for now he cannot surrender, or alien his estate, nor the Feoffee cannot make an admittance, for he is not *dominus pro tempore*.

Resolved, that such forfeitures remain as were before the severance, as Feoffment, lease, wast, denier of rent. So, if the land were of the nature of Borough English or Gavelkind, and other customes which run with the land remain. And 'twas said that such Copyholder hath no other means to alien, but by Decree in Chancery against him and his Heirs, but, by this, the interest of the Land is not bound, but the person only.

Kite and Queintons Case, 21 of the Queen's fo. 25.

Copyholder in fee surrenders out of Court, by the custome, to the hands of certain Copy-hold tenants, to the use of another and his Heirs, upon certain condition, at the next court, the surrender was presented, but the condition omitted, he, to whose use, &c. dies, the Lord admits his heir, he that made the surrender releases to the heir being in possession, and after enters.

Resolved, that the presentment of the surrender was void, for that the condition was omitted, for, the surrender that the Copiholder made, was not presented, but if the surrender & the condition had been presented, and the Steward in entring of it omits the

condition, upon sufficient proof of it, the surrender shall not be avoyded, but the roll amended, for the roll doth not conclude the party for to plead, or give in evidence the truth of the matter.

Resolved, if a Copy-holder be ousted by wrong, release to him by the disseisor, doth not transfer right, because, he hath not any customay estate on which the release of the customary right may inure, and this should be prejudicial to the Lords, by this, he shall lose his Fine and services; but a release made to him which is admitted by the Lord, and in possession, is good, and a release of a customary right may inure to him, and the Lord not prejudiced, and the release shall inure by way of extinguishment. And Littleton speaks of an alienation by surrender only, which ought to be into the hands of the Lord; but a release cannot be done to the Lord, and Littleton says, he which claims a Copyhold by surrender, hath no other evidence; but he which claims an extinguishment of a right, may have it by release by deed, and 'tis not perill to purchasers, for if a Copyholder in possession sells it, he will shew the release, and he which out of Possession cannot sell, he hath gained the possession, & caveat emptor. *177*ay, if he which hath a pretended title, &c. to a Copyhold, bargains, &c. this is within 32 H. 8. for Statute says (*any right or title*) and great part of land within the Realm is in his copy, and therefore intention was to include them, to avoid maintenance and champerry.

Melwich and Luters Case, 30 of the Queen so. 29

Resolv'd, that the lessee of a copyholder for a year shall maintain an *Ej Ffme*, for his term warranted by Law, by force of the generall custom

of the Realm, 'tis reason that he should have reme-
by *Ej. Firma.* and this is a speedy course against a
Stranger. Resolved, that the Copy-holds are not
destroyed, by severance of the inheritance of the
from the Mannor, but remain in force. So *Murrells*
case before adjudged.

Resolved, that when the Lord of a Mannor having
many ancient Copy-holds in a Town, grants the in-
heritance of all the Copyholds, the grantee may hold
a Court for the customary tenants, and accept surren-
ders, and make admittances, and grants for every
Mannor which consists of Free-holders, and Copy-
holders, comprehends in effect two severall Courts, the
one, the Court Baron, for Freeholders, and in this,
the Suitors, *viz.* the Freeholders are Judges, and the
other Court for the Copyholder, and in this the Ste-
ward, or the Lord himself is Judge; and though this
is not a Mannor in Law, because it wants Freehold-
ers, yet the grantee may hold such Court, as afore-
said, for Copyholders only, as the Grantor himself
might. So, if all the Freehold, escheat, or the Lord
releases the tenure, and services, yet, he may hold a
customary Court for the Copyholders. *Note (Reader)*
though the Lord, by his own act, cannot make of one
and the same Mannor at common-Law, divers leve-
rall mannors; consisting of Demeans and Freehold-
ers, yet, he may make a customary Mannor of Copi-
holders.

Resolved, that the Lord himself may make a grant
of admittance, of a Copy-holder, out of the Mannor,
at what place he pleases, but, if the Steward, or any
Court, holden out of the Mannor shall make grants
or admittances, they are void.

Neales Case, 37 of the Queen, fo. 26.

ADjudged, that where the Lord of a Mannor demises all his lands, granted by Copy, for two thousand years, that the Lessee may hold Courts for Copyholders (as *Melmiches Case* is before) and 'twas so to be resolved in *C. Mattons Case*, Note (Reading a good diversity, where the number of the Copyholders may support the custome, and a singular Case a Copyholder (as in *Murrels Case* before) in which case, the Lord doth not grant tacitly any customary Court.

Clifton and Molineux Case, 27 & 28 of the Queen, fo. 26.

RESOLVED, if a Steward hold Court out of the manor, all grants and admittances there made, void, for, the Court ought to be holden within the Mannor, not out of the Jurisdiction of it (as *Melmiches Case* is before) but, resolved that by custome, a Court may be holden out of the Mannor, and grants &c. shall be good, as *Abbots, &c.* used for to hold Court, at one Mannor, for divers severall Mannors. Resolved, that if a woman Copyholder for life, take husband, who commits wast, and dyes, the Copyholder is forfeited, otherwise, if a Stranger does wast, without the assent of the Husband.

Taverner and Cromwells Case, 26 of the Queen, fo. 26.

RESOLVED, if a Copiholder, seized of three severall Copy-holds, of three severall acres, makes wast in part of one, &c. all that is forfeited, but not the others, for though they are all in one hand, yet every one is severally holden, and a severall condition

Law annexed, and the severall conditions follow the
 severall tenures. So, resolved, if the Copy-holder
 surrender them to the use of A. And the Lord admits
 A. *Tenendum per antiqua servitia inde prius debita et*
de pure consuetudine, and A. makes a forfeiture in one, he
 shall forfeit that only, for, the *Tenendum* (*reddendo*
singulis) continues the severall tenures, so that
 it is not materially, if the Copy-holds are in one, or
 severall copies. So if diverse severall Copyholds, escheat
 to the Lord, and he grants them *Tenendum per antiqua*
servitia, they shall be severally holden as they were
 before, though he grants them to one man. Resolved, that
 when he to whose use a surrender is
 made, is admitted, he is in by him that surrendered,
 and in a plaine in the nature of an entry in the King
 shall be supposed in by him, for the Lord is but an in-
 strument to make the admittance, and his charge shall
 not bind him that is admitted. So (Reader) where-
 fore 'tis said, that by the forfeiture of the Husband,
 all the estate of the Wife shall be forfeited, 'tis to be
 intended, all the Copyhold under the said tenures.

Hubbard and Hammonds Case, 42. and 43 of the Queen's
case 27.

Resolved, that if the Fines of Copyholders upon
 admittances, be incertain, the Lord cannot exact
 excessively and unreasonable Fines; if he does, the co-
 pyholder may deny to pay it, without forfeiture, and
 it shall be determined before the Judges, upon a de-
 clarer, or evidence upon proof of the value of the
 land, and what Fine was reasonable to be demanded; for
 it should be otherwise, great part of the Copyholds
 should be destroyed at the will of the Lord, and so
 as *Hodgesons Case* adjudged.

Resolved, if the Lord assess a reasonable fine, and
 the

require the Copy-holder to pay it, he is not bound to pay it presently, because he could not know what the Lord would assess, & *temoretenetur divinae*, and he has a convenient time to pay it, if the Lord limits no time, otherwise of a fine certain.

Resolved, if a Copy-holder hath severall Copy-holds, by severall services, the Lord ought to assess and demand fines severally for every parcel, and a Tenant may refuse to pay his fine for one, and for that only, and every several tenure hath severall conditions in law tacitely annexed to it. So, if the severall Copy-holds are surrendered to the use of another, and the Lord admits him, *Tenendum per aliquas servitias, &c.* the tenures are severall, and fines severall. *Taverner ca.* before. Resolved that no fine is due to the Lord till admittance, for admittance is the cause of the Fine, and if after the tenant denies to pay it, 'tis a forfeiture. *Baron and Flatman's Case* and *Sands Case* so resolved.

Westwick and Wyers Case, 43. of the Queen, fo.

A Woman Copy-holder in Fee, surrenders to the use of W. her Sonne in fee, and at the Court, the entry was *Ad hanc curiam venis, W. & uxor ejus, & ceperunt, &c.* W. died, I. his wife lived and surrendered to the use of J. S. in fee. Resolved when the Lord hath the Copy-hold by surrender, to the use of another, he hath but a customary power, to make admittance, *Secundum formam & consuetudinem sursum redditonis*; and 'tis not like to the fees at Common Law, and though the Lord grants by Copy to another, 'tis without warrant, notwithstanding he might make an admittance, according to the surrender, and he which is admitted shall be in by him that surrendered (as *Taverner*

Case before) and the Court agreed, if the Lord
 grant to *cestuy que use*, and a Stranger, all shall inure
 to *cestuy que use*, or if he admits him upon condition,
 the Condition is void. As executors agree that the
 Legatory and I. S. shall have, &c. or, that the Legato-
 ry shall have upon condition, the Legatory shall have
 solely and absolutely, for aiter the assent of the Ex-
 cutors, he is in by the Devisee. And 'twas said,
 that 'twas adjudged in *Buntings Case*, that where the
 Lord admits one to hold to him and his Heirs, (where
 the Surrender was for life only) that he hath but for
 life. Resolved, that without speciall custome, or
 other speciall matter, the admittance shall inure on-
 ly to the Husband; and Judgement was given accor-
 ding.

*Bunting and Lepingwells Case, 27 and 28 of
 the Queen, fo. 29.*

Resolved, that though T. who was Husband of the
 Wife, *De facto*, was not party to the Libell (for
 S. Libelled against the wife, without naming her
 Husband, for a divorce, upon a precontract betwixt
 him and the wife) nor the sentence in the Spiritu-
 all Court, which dissolved the Marriage betwixt him
 and his Wife, yet the sentence against the wife on-
 ly, being but declaratory, shall bind the Husband *De
 facto*, and for that the consufance of the right of Mar-
 riages belongs to the spirituall Court, and they have
 given sentence in it, the Judges of the common Law,
 (though it be against the reason of the Law,) shall
 give faith and credence to their proceedings and
 sentences, as consonant to the Law of holy Church;
 for, *Cuiuslibet in sua arte perito est credendum*. So, 'twas
 adjudg'd that the Plaintiff (born in the second Mar-
 riage) was legitimate.

Resolved, when a Copy-holder surrenders to the Lord, to the use of his Wife and his younger Son, without limiting any Estate, they have for life only, for, as well estates as descents, shall be directed by the rules of Law, as necessary consequents upon the custome, except there be a speciall custome within the Mannor, that *Sibi & suis*, or *sibi & assignatis*, may create an estate of inheritance, And 'twas observed that the Estates limited upon surrenders, are alwaies annexed to the estates of him to whom the surrender is made, and alwaies the surrender to the Lord is generall, without limitation of any Estate. Resolved that when the Lord admits *cestuy que use*, for life, reversion is in him that surrendered, not in the Lord for he is but an instrument.

Resolved, that a man may surrender to the use of his Wife, though that *cestuy que use*, is in by him that surrendered, because the Husband did not do so immediately to the Wife, but by a second means, viz. By surrender to the Lord, and by admittance from the Lord.

Resolved, that when B. surrendered out of Court and before that 'twas presented in Court, he died yet after, being presented according to the custome 'tis good, otherwise, if it had not been presented according to the custome; so, if the Tenants in whose hands, &c. dies, yet if it be proved, 'tis good enough, as in *Queintons Case* before, if *Cestuy que use*, &c. before admittance, his Heirs shall be admitted.

Down and Hopkins case, 36 of the Queen, sq. 29.

Resolved, that wherethe custome of a Mannor was to grant Copies for one, two, or three lives, the grant to a woman during her viduity, is within the custome, or 'tis an estate for life, but every grant

life is not *Durante viduitate*, issue was, whether the custome was, that the Wife of a Copy-holder after the death of the Husband, should have for life, and 'twas given in evidence, that she should have during her viduity, and adjudged that the evidence did not maintain such custome, for 'tis a less estate then for life. But in the principal Case, 'tis a greater estate which is warranted by the custome, and therefore a lesse is within it, (according to *Gravenors Case* before.) 'Twas said, that a Lord may retain a Steward by word, to hold Courts, &c. as a Bayliff, and his retainer shall serve till he be discharged.

Harris and Jayes Case, 41 of the Queen, fo. 30.

Resolved, that a Lord may retain one to be Steward of his Mannor, and to hold Courts by word in the Case before. Resolved, that where a Copyhold escheats by attainder of felony of a Copyholder of the Queen, that the Steward may grant it over, *ex officio*, without speciall warrant, for the custome warrants the Steward to grant it, and this shall bind the Queen and her Heirs, &c. But yet his duty is before to inform the Lord Treasurer, Chancellor, or Barons of the Exchequer, or any of them, for his better direction.

Resolved, that the Auditor or Receiver of the Queen hath no power to retain a Steward to hold Courts, &c. But it behooves that the Steward (who makes such voluntary grants upon escheats, or forfeitures to be good) to have Letters Patents of the Stewards of the same Mannor.

And 'twas said, that 'twas adjudged in the *Lady Wolcrofes Case*, that where one was retained generally by word, to be Steward of a Mannor, and to hold Courts, that he may take surrenders of customary tenants out of Court.

Shaw

Shaw and Thompsons Case 33 of the Queen, fo. 30

RESolved, that a woman shall not be indowed Copy-hold without speciall custome; and when a woman is to be indowed by custome, shall have all incidents to Dower, and shall recover damages by the Statute of *Merton*, because her husband died seised, and therefore the recovery of a maner of 50 l. in the Court of the Mannor, was allowed, though this exceeded 40 s.

Resolved, that no Action of Debt lyes, for damages at common Law, for upon such judgement no error of false judgement lyes, but the remedy is in the Court of the Mannor, or Chancery. Fe. Justice, said, That he had seen a Record 36 H. 2. where the Lord by Petition to him, had for certain errors in the proceeding, reversed such a judgement and upon this, the Defendant maintained an *Assumpsit*, to be restored to the damages recovered against him. See 14 H. 4. cited before in *Browns Case*. And 7 E. 4. 29.

Hoe and Taylors Case, 37 of the Queen, fo. 30

RESolved, that Underwood growing upon parcel of the Mannor, may by custome be granted by Copy of Court roll; and it is a thing of perpetuity to which a custome may extend, for after every cutting the Underwood grows, *Ex stipitibus*. So, it is resolved that Herbage, or any profit of any parcel of the Mannor, may by custome be granted by Copy, and it was said, that a fair appendant to the Mannor of C. in S. is granted by Copy, and this example is the reason of the first pillar in *Murrels Case*.

Fro

Frenches Case, 18, & 19. of the Queen, fo. 31. 1

Resolved, if the Lord Lease for years, life, or make any other Estate, by deed, or without deed, of Copy-hold Lands forfeited, escheated, &c. to him, that this Land can never be granted again by Copy, for the custome is destroyed, for during these estates, the Land was not demised, nor demisable by Copy. So, if the Lord make a feoffment, and enter for condition broken; but if the Lord keep it in his hands a long time, or leases it at will, he, his heirs or assigns may regrant it. So, if the interruption be tortious, as by disseisin, and discent, false verdict or erroneous judgement; for, *non valet impedimentum, quod de jure non sortitur effectum, & quod contra legem fit, pro infecto habetur*. But if it be extended upon a statute or recognizance acknowledged by the Lord, or if the Wife of the Lord hath his Land assigned to her in Dower, though these impediments are by act in Law, yet for that the interruptions are lawfull, the Land cannot be after granted by Copy. If a Copy-holder accept a Lease for years of the Lord, of his Copy-hold, 'tis destroyed for ever. If a Copy-holder take a Lease for years of the Mannor, his Copy-hold hath not continuance, *Hides Case* adjudged 17 of the Queen. But there 'twas resolved, that such a Lessee might regrant the Copy to whom he would, for the Land was alwaies demised or demisable. If a Copy-holder be surrendered to the lessee, his executors or assigns may regrant it. If a Copy-hold escheat to the Lord, his alienee by fine, feoffment, &c. may grant it.

Foiston and Crachbroodes Case, 29 and 30 of the Queen's Bench, 31.

ADjudged, that where a Copy holder in plea alledges, *Quod infra Man. præd. talis habetur nec toto tempore cuius &c. habebatur consuetudo, viz. quilibet tenentes prædictorum tene ment. vocat. C.* used to have common, in such a place, parcel of mannor, & that he is a Copyholder of the said Tenement, that this custome, as well for the matter as form, was good; for the Copy-holder cannot prescribe in his own name, for the exility and baseness of his Estate, and if he had claimed common in the soile of another, he ought to prescribe in the name of the Lord, *Viz.* That the Lord, and all his Ancestors and all those whose estates, &c. have had common in such a place, for him, and his tenants at will; when he claims this in the soile of the Lord, he cannot prescribe in the name of the Lord, for the Lord cannot prescribe to have common, &c. in his own soile; and therefore he ought to alledge, that within the mannor there is such a custome.

Note, a good diversity between a prescription which is personall, and alwaies made in the name of a certain person, or his Ancestors, or those whose estates &c. and a custome which is local, and alledged in no person, but that within the Mannor, there is such a custome; this shall serve for those who cannot prescribe in their own name, nor in the name of any person certain, as the Inhabitants of a Town. Also, the allegation of a custome, shall serve, when 'tis referred to a thing insensible, *Viz.* That all such Lands are deviseable. And, for that in the principal case, the custome may have a lawfull commencement, that one copy-holder only shall have common, esto-

vers, or other profit in the land of the Lord, and that in many Mannors; some Copiholders have common in one waste of the Mannor, and others in another severally, so that the custome cannot be applyed to all, and because, that all the other Copyholds may be determined and extinct, 'twas adjudged the custome was well alleged. So, to have common of estovers in the wood of his Lord parcell of the Mannor, &c. was adjudged good, 10 of the Queen, as 'twas said.

Myttons Case, 26 Eliz.

Queen Elizabeth by Letters Patents did grant the office of the Clerkship of the County-Court of Somerset to Mytton, with all fees, &c. for life. Arthur Mytton Esquire, Sheriff of the same Shire interrupted him, because it was incident to his office. Mytton complained to the Lords of the Councell, and it was referred to the two chief Justices, Wray and Anderson. And after many arguments concerning the validity of the grant, and conference had with all the other Justices, It was resolved by all the Justices, *Nullo contentiente aut reluctante*, that the said Letters Patents were void: and their reasons were, that the office of the Sheriff was an ancient office before the Conquest, and of great trust and authority, for the King cometh unto him *Custodiam Comitatus*: And though the King may determine the office *ad beneplacitum*, he cannot determine this in part, as for one town, or Hundred, nor abridge him in any incidents of his office; for the office is entire, and ought to continue so without any fraction, or diminution without by Parliament, and the County-Court, and the King of all proceedings therein, are incident to the Sheriffs office, &c. And though 'twas granted when

the office of the Sheriff was void, yet the new Sheriff shall avoid it; as *Scroges Case*, in the time of vacation in the office of Chief Justice of the Common Bench, Queen Mary granted the office of the *Exchequer of London*, resolved, that the next Chief Justice shall avoid it, for 'twas incident to his office.

Also in all Writs directed to the Sheriff concerning the County Court, the King saies, *in comitatu meo* and in return of exigents made by him, he saies, *comitatum meum tene*. &c. and the style of the Court proves it, and by the Statute of 33 H. 8. the Sheriff of Denbigh shall keep his shire-Court at, &c. In a judgement 'tis said, *in pleno com. tuo recordari facias* &c. and in a precept of Tolt, 'tis said, *summoneas quod sit ad comitatum meum*. And it should be very venient that another should have the custody of entries, and Rols of Court, which may be imbecill and the Sheriff responsible for them. And it is resolved, that the custody of all the Gaols within every County belongs to the Sheriff by right, and annexed and incident by the Law to the Sheriff's office, *vid. stat. An. 14 E. 3. ca. 10.*

Bozouns Case, 26 & 27 of the Queen, fo. 34.

A Portion of tythes in L. appertained to the Rectory of G. which was presentable, and the Queen was seized of the Rectory of L. *jure com.* which was appropriated to the Monastery of W. grants to B. *ex gratia speciali*, &c. *totam illam portionem decimarum*, &c. in L. &c. *cum omnibus aliis decimis quibuscunq; in L. tunc, vel nuper in occupatione*, I. C. that the Parents shall be of force *non obstante aliquo defectibus in non nominando, male recitando*, &c. *aliquo occupatoris*, and I. C. had never any tythes in L.

Resolved, that (in the occupation of I. C. re

to all the sentence, and not only to (*cum omnibus aliis decimis, &c.*) 1. Because (*illam*) demonstrates fully, that there ought to be words subsequent, to explain and reduce in certainty that portion, by the intention of the Queen, should pass, *viz.* what which was in the occupation of I. C. and 'tis not satisfied till it be come to the full end of the sentence. 2. This conjunction (*cum omnibus aliis, &c.*) couples the last words to the former, and makes the words subsequent to referr to all the sentence. 3. If all the tithes in L. of the said Rectory should pass, the addition of the occupation of I. C. should be vain, & *maledicta expositio, &c.*

Resolved, that by grant of *portionem decimarum, &c.* the tithes parcell of the Rectory of L. do not passe, for (*portion*) properly signifies a part or portion in gross, divided, and not parcell of the Rectory, and the Queen had not any portion in gross, but all were parcell of the Rectory; And (*ex gratia speciali, &c.*) shall not extend by any strained construction, to make anything pass, against the intention of the Queen expressed in her grant, and against the apt, proper, and usual signification of the words of his grant.

Resolved, that because J. C. had not any tithes here, nothing passes, for admit that a portion should be taken for a part, then the effect of the grant is, *tenem illam portionem decimarum in occupatione J. C.* and in truth, he never had any part, nothing without question passes, in case of a common person, *a fortiori*, or in the Case of the Queen. As to the point, when clause of *Non obstante* shall make the grant of the Queen good, when nor.

Resolved, when the King by the common Law cannot in any manner make a grant, there a *Non obstante* of the common Law, will not make the grant good, against the reason of the common Law; as the King

grants a protection in an assise, or *Quare. impedit*, notwithstanding any Law to the contrary, 'tis void, for the protection lies not in these cases, for the losse which may come to the parties by such great delay. when the King may lawfully make a grant, but the common Law requires, that he be so instructed, that he be not deceived, there is a *Non obstante* supplied, and makes the grant good. As the King having made a lease for life, or years, grants the land, *Non obstante* that it be in Lease for life, years, &c. or if he grant the land, and further grants the reversion of it, depending upon an estate for life, years, &c. 'tis good. See the Book at large.

Resolved; when the words are not sufficient, *termini*, to passe the thing granted, but the grant is void, there a *Non obstante* will not serve, as in the principall case; and the patents were not holpen by 18 of the Queen, ca. 2. for Patents of concealment are expressly excepted out of the Act.

Terringham's Case, 27 El. in Banco Regis, fo. 36.

RESolved, that prescription doth not make a thing appendant, except the thing which is appendant agree in quality and nature to the thing unto which it should be appendant, as a thing incorporate, as an advowson to a thing corporate, as a Mannor, or a thing corporate, as Lands, to a thing incorporate, as an office, these may be appendant, but every thing incorporate may not be appendant to a thing corporate, as common of turbary may not be appendant to Land, but to a Messuage or house, as it is holden by ass. 9. for the thing which is appendant ought to accord with the nature and quality of the thing to which it is appendant; and turves ought to be appendant in a Messuage,

The commencement of common appendant by the ancient Law, was in this manner, viz, when a Lord of a Mannor infeoffed another of arrable lands to hold of him in Socage, (*id est*) *per servitium socæ*, the Feoffee *ad manutenend^o servitium socæ* had common in the waists of the Lord for his necessary beasts that did plow & ayre his lands, & this common is of common right, and commenceth by operation of the Law, and in favour of tillage, and therefore it needeth not to prescribe in that, for so it is holden *H. 6. & 23 H. 6.* as one ought if it were against common right. But it is only appendant to the ancient arrable Lands, and only for oxen, horses, kyne, and sheep, &c. And because it is against the nature of common appendant to be appendant and meadow or pasture, and because that here, the prescription was to have common time out of mind to a house, meadow, and pasture, as well as to arrable, by which it appears to the Court, that there hath been a house, meadow, and pasture, time out of mind, 'twas resolved, that this common was appurtenant, not appendant. But if of later times, men have builded upon some part of such arrable Lands, and some part thereof is imployed to a meadow and pasture, and this for maintenance of tillage (the original cause of common) the common remains appendant; and it shall be intended in respect of the continuall usage of the common for beasts levant and couchant upon such lands, that at the beginning all was arrable. But in pleading he ought to prescribe that the same is appendant to Land, for though *terra dicitur a terendo, quia vomere teritur*, yet *terra* includes all, and is arrable, though converted to meadow, &c. For it may be plowed.

A man may prescribe to have common appendant to his Mannor, for all the demesns shall be intended

arrable;

arrable; at least, in construction of Law *redd' singulis*) it shall be appendant to such demesne which are ancient arrable, &c. And when a man claims common appendant to his Mannor, no incongruity appears of his own shewing, as here. So common may be appendant to a Carve of land, which may contain pasture, meadow, and wood, but it shall be applied to that, which agrees with the nature of the common.

Resolved, that common appendant may be apportioned, because 'tis of common right; for if a commoner purchase part of the Lands, in which he has common, yet the common shall be apportioned, as well as if the Lord purchase parcell, if of the remainder the rent shall be apportioned. And if A. a commoner enfeoff B. of parcel of his ancient lands, the common shall be apportioned, and B. shall have common *pro rata*. And 'twas agreed, that such common which is admeasurable, remains after severance of part of the Land, to which, &c. But here, for that the common was appurtenant; 'twas adjudged, that by purchase, all was extinct, for 'twas against common right; for, by the act of the parties, it cannot be *esse* for part, and extinct for part.

'Twas said that *pertinens* is the Latine word, as well for appurtenant as appendant, and therefore *sub materia*, and the circumstances ought to direct the Court to adjudge the common, appurtenant or appendant.

Resolved, that unity of possession of the entire land to which, &c. and of the entire Land in which, extinguishes the common appendant. By *VVray*, ch. Justice, common for vicinage, is not appendant, but for that it ought to be by prescription, 'tis resemble to common appendant, but common appurtenant, in grosse, may commence at this day, by grant, & prescription.

Prescription; and by him, the one may inclose common for vicinage against the other: as hath been adjudged in *Smith and Redmans Case*. Resolved, that a man may chase out beasts that do him trespass, with a small dog, and shall not be compelled to distrain them damage feasant.

Cases of Appeals and Indictments.

Brookes Case, 28 of the Queen, fo. 39.

Resolved, that in appeal of Burglary, 'twas an insufficient count that the Defendant *domum, &c. felonice & burgaliter fregit*, for it ought to be *burglariter* or *Burgulariter*, which is *vox artis*, as *murdravit*, *rapuit*, which cannot be otherwise expressed.

Resolved, if the count had been sufficient, he being convicted, once, should not be again impeached; but here he was discharged upon the insufficient count. By *urray*, Chief justice, if upon accident, a man and all his family are out of the house, and one in the interim breaks the House, and commits felony, 'tis burglary, for the indictment is, *domum mansionalem fregit* and so 'twas resolved, 38 of the Queen, where a man hath two Mansion Houses, and servants in both, and in the night when the Servants are out &c. the house is broken, 'tis burglary.

Welherell and Darlyes Case, 35 of the Queen, fo. 40.

IN an appeal of murder, the Defendant was found guilty of homicide, and had his Clergy, after indicted, and arraigned for murder, pleaded this conviction; Resolved, that 'tis a good barr at Common Law, and restrained by no Statute; the reason is, because

cause the life of a man shall not be brought twice in question for the same offence.

Youngs Case, 38 of the Queen, fo. 40.

AN Indictment that *dedit unam plagam mortalem circiter pectus*, is sufficient, for 'tis incertain whether it be in the neck, arm, or belly; and indictment ought to be certain, and shew in what part the wound is, and the profundity and latitude, that it may appear to the Court to be mortall, and one of the wounds incertainly alleged, makes the whole Indictment insufficient. 'Twas said, that the Indictment ought to have been, that if the party had not died of the first stroke, that he died of the other, and thus the common course.

Upon a sudden affray, if the Constable or any of his assistants in suppressing it, be kill'd, 'tis murder in Law though the murderer knew not the party killed, the Law adjudges it murder, and that he had malice prepense, for that he opposed him against Justice. So in case of a Sheriff, or any of his Bayliffs or Officers in execution of process; so, of a Watchman.

Walkers Case, 41 of the Queen, fol. 41.

Resolved, that an Indictment of murder (upon which the party was outlawed) that he stroke the dead in *sinistra parte ventris circa umbelicum*, was good for *sinistra parte*, was sufficient, and the other superfluous, but in *Youngs* before, there was no certainty before the *Circiter*.

Hcydons Case, 28 of the Queen, fo. 41.

Exceptions to the indictment, 1. Because 'twas taken before B. *Coronatore in com. praed.* and doth

not say *de com. præd.* Resolved, it shall be so taken by reasonable intendment, and the Writ *de coronatore eligendo*, is, *quia A. B. nuper unus Coronator. in com. duo diem clausit, &c.* and so 'tis taken in *Villoughbyes* case in *Plodon*, 2. Because he doth not say, that E. S. (dead) *fuit in pace Dei, & dominæ reginæ*; resolved, that they are only words of form, to amplyfie the hainousness of the offence, nor of substance, and perchance he was not in peace. 3. Because he doth not say, *felonice* nor *ex malitia sua præcogitata dedit, &c.* Resolved, that the word (*et*) couples the sentences together, so that these words (*felonice & ex malitia, &c.* first spoken) refers to all the subsequent words, &c. and *tunc & idem* makes it clear. 4. The profundity of the wound is not shewn; Resolved, it cannot be here; for all the pan of the Knee was cut off. 5. 'Tis said, *tempore felonie præd. & muredredi*, where it should be *muredri*, Resolved the first words were sufficient, and when *muredredum* being a word insensible is superfluous, and shall not hurt. 6. The wound was the fourth of August, the death the nineteenth of December, and the indictment is that T. M. &c. *tempore felonie & muredredi præd. viz. 4. Augusti felonice fuer' presentes & auxilantes, &c.* 'Twas objected, that the death with relation to the stroke; Resolved, that indictments have been often adjudged insufficient, when the stroke is one day, the death another, and the Jury conclude the death to be done the first day; But where it ought to have been, that they were, *presentes & auxilantes, &c. ad feloniam & mured'. præd.* and relation which is a fiction, shall make no man a felon. and *VVray* said, that without question, the year bringing the appeal, shall be accounted from the death, not from the stroke,

Hume against Ogle 32 and 33 of the Queen, fo. 42.

ADjudged, that the Count (that the defendant gave the stroke the 27 of September at D. in the County of N. and that her Husband of the same stroke at D. &c. died, and so the same Defendant murdered him at D. aforesaid) was repugnant and insufficient, as it cannot be said, that he murdered him the same day (as Heydons case is before) so neither at the place where the stroke was, but where he died.

Hudson and Lees Case, 31 of the Queen, fo. 43.

IN an appeal, H. counted that the Defendant felonically maimed him in his left hand; the Defendant pleaded that before, &c. the Plaintiff recovered Trespas for the same battery and wounding, and satisfaction acknowledged. Resolved, that the barre is good, for where the Plaintiff is to recover damage only (as in this Case of appeal) he shall be twice satisfied for the same thing, *Nemo debet puniri pro uno delicto*. And here the wounding in the first action includes the mayhem, & more, and the defendant hath averred that the wounding in the second action, and the mayhem here is one.

Syers Case, 32 of the Queen, fo. 43.

RESolved, if the principle be pardoned, or have Clergy, the accessory cannot be arraigned, for *a Maxime, ubi factum nullum, ibi fortia nulla, & ubi est principalis, non potest esse accessarius*, and none can be principal before it be so adjudged, by law, viz. judgement upon verdict, or confession, or by Oath of lawry; and it suffices not that in truth, he be principal.

ball; and the acceptance of pardon, or prayer of Clergy, is an argument, but no judgement in Law, that he is guilty. But, if the principall, after attainder, he pardoned, or hath his Clergy, the accessory shall be arraigned, for it appears judicially that there was a principall.

Bibithes Case, 39 of the Queen, fo. 34.

Resolved, that where the principal was found guilty of a man-slaughter, and not guilty of murder, and had his Clergy, the accessory shall be discharged, or till Judgement, it doth not appear judicially, that there was a principall. So if the principal upon his arraignment, confesses the felony, & before judgement obtains pardon, or hath Clergy. Resolved that there cannot be an accessor before the fact, in man-slaughter, for 'tis upon a suddain affray; and if pre-meditated, 'tis murder.

Vauxes Case, 30 of the Queen, fo. 44.

Resolved, that where a man was indicted for poisoning another, perswading him that the potion mixt with Cantharides should cause him to have issue by his wife, the indictment (*nesciens præd. potum cum veneno fore mixtum, sed fidem adhibens præd. persuasioni dicti. w. v. recipit, & bibit*) was sufficient, for, 'tis not expressed that he received the poyson, (for *venum præd.*) wants and the words alter (*immediate post receptionem veneni præd.*) are not sufficient to maintain an indictment, which ought to be certain, and not by implication.

Resolved, that *Vaux*, who perswaded, was a principal murderer, though he was not present at the receipt of the poison, and here he cannot be accessary, for

for there is no principall; and if any one had procured V. to do it, he had been accessory before, which note, a speciall case, where principall and accessory both are absent at the time of the felony.

Resolved, that (*auter foits acquite*) here is no plea, for, he was discharged upon an arraignment upon this insufficient indictment, & the former acquittal or conviction, ought to be lawfull, and the maxim is, that the life of a man shall not be twice in jeopardy for one offence, but here his wife was not in jeopardy. If a man be convicted by verdict, or confession, upon an insufficient indictment, & no judgement given, he may be again indicted and arraigned, for the Law wants its end; but, if upon such insufficient indictment, the Felon hath judgement *quod suspendatur a collum*, and so attainted (which is the end of the Law) he cannot be indicted again, &c. till the judgement be reversed; and upon such acquittal a conspiracy lyes.

wrote and wiggs Case, 33 of the Queen, fo. 45.

THe defendant in an appeal of murder pleads the *auter foits*, by inquisition taken before the Coroner of the Queens household, and B. one of the Coronors of M. he was indicted of Man-slaughter, where inquisition was certified to N. at the Gaol delivery, and the Defendant upon this was arraigned, confessed the felony, and had his Clergy, and it appeared at arraignment, &c. was after the purchase of the writ of appeal, and before the return.

Resolved, that *auter foits* convict of man-slaughter and Clergy, is a good barre in an appeal of murder, as 'twas adjudged in *Holcrofts* case. In which it was likewise resolved, that an inquisition taken before the Coroner of the household, &c. and one of the Coronors

nors of M. is well taken, and within the Statute of *articuli super chartas*; though the Statute requires two persons; for the intent of the Act was performed, and the mischief recited avoyded, for though the Court removes, yet, he may proceed as Coronor of the County.

Resolved, also upon the Statute of 3 H. 7. ca. 1. that this Case was out of the Statute; for if the defendant had his Clergy, the appeal lyes not, *a fortiori*, when he is convicted only, and prays his Clergy; and the act of the Court to be advised as to the allowance of Clergy, (so the case was) shall not prejudice the party in case of life: and 'twas resolved, that attaint of murder in the act, extends to a person convicted by confession, or verdict, as to a person attaint, for he which is attained, is convicted and more. And *agnes Gainfords Case* adjudged, that where 3 H. 7. is, *That the wife, or heir of him so slain shall have appeal*, that the Heir of a woman, &c. shall have it against him, who was acquitted of the same murder. So resolved here, an indictment and conviction, or acquittance of Man-slaughter, is a barre to an indictment of the same death, for all is the same felony, though the circumstance alter it.

Resolved, that at common law, the Coronor of the household had an exempt Jurisdiction within the Verge, and the Coronor of the County could not meddle, as appears by *Articuli super chartas*; and *Swifts case* adjudged where a Coronor of the County took an inquisition within the Verge, 'twas avoyded by plea, the one cannot meddle within the power of the other. But Justices of the Kings Bench, of *oyer and terminer*, &c. may inquire, hear, and determine all murders, &c. within the Verge, for their authority is generall, through all the County: so resolved in *Holcrofts case*.

Resolved, that the indictment was sufficient, it doth not appear that D. (where the stroke death was) was within the Verge, & though in truth it were within, yet it ought to be found by the oath of the Indictors, and cannot be supplied by nude averment, and it shall not be void *& coram non judice* as to the Coroner of the Household, and good, before the Coroner of the County, for the Record is intire, and taken intirely before them, &c. And the Defendant in his Plea had averred, that D. was within the Verge, so the Coroner of the County could take the indictment only.

Resolved, for that the indictment (upon which he was convicted) was insufficient, that he may be newly indicted, &c. for his life never was in jeopardy.

Resolved, that where the stroke was one day, and death another, the conclusion ought to be, that he was murdered the day of his death, otherwise naught, for 'twas not murder before: and 'twas resolved, that the finding of the stroke, and the death were not sufficient of it self, without conclusion; and so T. W. murdered the said R. W. Resolved, that though the conviction were pending the appeal, yet it had been lawfull, and before that the Defendant was compelled to plead, it had been a good bar.

Waits Case, 45 of the Queen, fo. 47.

Resolved, that where a woman brought seaven severall appeals against several Persons, as principals, all ought to abate, but the first, for all the principals and the accessories before the murder and after, and before the writ purchased, against whom the Plaintiff will bring an appeal, ought to be named in the Writ: for all make default, except one, yet

the Plaintiff ought to count against all, therefore he ought to bring the appeal against all, And the Defendant shall not have damages by the Statute of *W. 2.* for it is out of it, because the writ abated. And the Statute of *Magna Charta* sayes (*appellum*) in the singular number.

Hill's, 30 of the Queen, fo. 48.

AN indictment upon 8 H. 6. was quashed, *Quia fuit inquisitio capta ad sessionem pacis in Com. S. ten. die Martis, & dies Mercurii*; though the Sessions may endure two or three daies, yet the record ought to mention, that they were holden at a day certain; as also for that the Statute was mis-recited in a point materiall. Note, because mis-recitall is fatall, the sure way is, to draw the indictment with conclusion *contra formam statuti*, and with no recital of the act.

Oguel's Case 29 of the Queen, fo. 48.

AN Executor possessed of a grange, consisting of divers parcels, demises all the grange (except H.) to A. for 23 years, and H. to F. for 23 years, and grants all the residue of his term in the intire grange to A. & F. B. the reversion, or grants a rent charge in fee, out of all his lands, &c. called C. grange *quondam in tenura B.* (the testator) and now *in tenura & occupatione de A.* The rent is arrear, the intire term expires, the Reversioner makes a Feoffment, the grantee dies, the Feoffee leases at will, the Executor distrains for arrearages.

Resolved, that at common Law, in some case debt lies for arrearages of an annuity in fee, though it continues; as if a Parson, or Prebend resign, or dies, because the Parson is chargeable, otherwise of a rent
ser-

service, charge, or seek, when the freehold continues; and for a rent there is a diversity, when a rent in fee is extinct by the act of the party, and when by the Law, and when particular estates expire; see a book at large. But 'twas resolved in the case at bar that the arrearages due in the life of the grantee, were lost at common Law. Resolved, that H. was not charged with the rent, for though it be parcel of the grange, and A. and F. have the reversion of the rent, and so it may be said in their tenure, yet, for that then had not H. in his occupation, 'tis not charged.

Resolved, that the Lessee at will is chargeable. 32 H. 8. ca. 37. for where things are due in right, and become remediless by the act of God, the Parliament which gives remedy for this, shall be favourably construed, and extend to advance the remedy proportionably to the defect of the Law, according to the meaning of the makers, and therefore the feoffee of the fee in infinitum shall be charged, for otherwise the Statute shall be in vain, &c.

Resolved, if the grantee in fee, or for life of a rent service or charge, (after 'tis arrear) grants over, the tenant attorns, the grantor dies, his Executors are not within the Statute, for by the grant the arrearages are lost, and were not due to the testator *tempore mortis*, as the Statute speaks; and after the grant the testator could not distrain for the arrearages; and the act gives remedy only, where the arrearages are due, and become remediless by the act of God.

Sharp and Pooles Case, 17 of the Queen, a rent was granted to a woman for life, 'tis arrear, she takes her Husband, 'tis arrear, the Wife dies, the Husband brings debt against the Heir being terretenant, for all arrearages: Resolved, that for the arrearages before the marriage he had no remedy at common Law, but for the other he had debt.

Object.

Objected, that the Husband shall not have the arrearages due before by this statute; 1. Because at common Law the Executors of the wife may have an action for them, and the Statute gives remedy, when Executors cannot have an action, and doth not intend to toll the remedy from the common Law. 2. The Branch sayes (*due in the wives life*) so the arrearages ought to incurre, when she is his wife. Resolved to the contrary, for the statute sayes, (*due and unpaid in the wives life*), and the common Law gives remedy for the arrearages of an Estate for life incurred in the life of the wife, and therefore the Statute did not intend to extend to these arrearages, but to the arrearages due before, for, *Verba accipienda sunt cum effectu*. Resolved, that a Feme covert cannot make an executor without assent of her Husband, and the administration of her goods of right belong to the Husband. And the Statute in naming the woman (*wife*) tends only to describe and design the condition of the woman, not to imply that the arrearages ought to incurre during coverture.

Rawlins Case, 29 & 30 of the Queen, fo. 52

Possessed of a House for thirty years (except a Stable of which B. was possessed for two years) - granted all his interest to C. and demised the Stable to B. for six years by Indenture after the end of the 10 years; C. redemises all to A. for twenty years, rendering twenty pounds per annum, and to pay a Fine of twenty five pounds, upon condition for to re-enter for non-payment of the rent, or Fine; before the day of payment, A. redemises the Stable to C. for ten years, the rent was behind, the fine was not paid, C. enters not into the Stable, nor aggrurns.

L

Resolved;

Resolved, that where the verdict was entered the terms past, and in the Roll the demise to B. for years was not entered to be by Indenture, that Roll shall be amended, because the note of the full verdict, which the Jury exhibited to the Court remaining with the Secondary, purports that the Jury found the demise *prout*; by which it doth appear to the Court, that the demise was shewn in evidence and reference made by the note to it; and so *twice*

Gomersalls Case.

Resolved, though the condition is of two parts the dis-junctive, for non-payment of rent, or of summe in gross, yet, if a A. had redemised any part the Houle to C. and C. enters, by which the condition is suspended, that all the condition as well for the laterall summe, as for the rent is also suspended, because the condition is intire, and cannot be divided by the act of the parties. Resolved, that if A. had redemised any part to C. though C. never entered, the rent is suspended, and though a Stranger occurs

Resolved, that the lease by A. to B. for six years though he had nothing at the time, was good by conclusion by the Indenture, and when C. redemised to A. then was the interest bound with this condition, then when A. redemises to C. the Staple is also concluded, for all parties or privies in the interest are bound by the Estoppel; then there is no other, but that A. demises for six years the Staple to B. and after demises to C. for twenty years (which is a good Lease in reversion for forty years) this is no suspension of the rent, or condition, for 'tis no grant of the reversion, but a future interest in reversion, no term, but an interest for term, as the pleading is, and notwithstanding the grant, the reversion is in the grantor, without turnment, and he shall have the rent upon the

lease, but if there be an attornment the reversion passes, and suspension will follow. And therefore it was agreed, if a man leases for twenty one years rendring rent, and a re-entry, the Lessee leases to the Lessor for six years, to commence two years after, the rent is arrear, and by this he shall defeat the future interest vested in him.

Resolved, that this Estoppel being found by verdict the Court ought to judge upon all the speciall matter, according to Law, and because they are sworn *ad veritatem dicendam*, they did well to find the truth of the Case, and leave it to the Court; by *Wray* Chief Justice in *Pledals Case*, the Jury was acquitted, for not finding such a Lease by conclusion, intending that they (being sworn *ad veritatem dicendam*) were not bound to find it; for the Court held that the interest of the land as to the parties and privies was bound, and no conclusion shall be by such indenture, after the term ended; by *Wray*.

Resolved, if Lessee for twenty years, leases for ten years rendring rent, and grants all his term and interest, if the Lessee attorns, the reversion passes, and if no attornment be, yet the interest in reversion passes, for the grant of a man shall not be adjudged void, if, to any intent, it may take effect.

Resolved, if Lessee for twenty years of a house, leases part for two years, and after leases to another for ten years, rendring rent, so that it inures as a lease in reversion for part, that the rent shall issue out of all, and of the interest of the term, though it be not any estate that may be surrendered, and though be conjoynd with Land in possession.

Error was brought upon this judgment, and this was assigned; for that R. the Plaintiff was an Infant, and was admitted by his Gardian, and no Record made of it, as is used *in Banco*, but only reci-

ted in the Court, *J. R. per A.B. gardianum suum, (hoc per curiam specialiter admissum,) queritur.* which was disallowed by all the Justices, upon search and view of many presidents, which make a Law in this Court, yet some Presidents were as in *Banco*.

Note (Reader) according to the opinion of *Wyn* 'twas resolved in *Londons* case, that if a man takes lease, by Indenture, of his own land, this is an Estoppel but during the term, and then both parts of the Indenture belong to the lessor.

warden and commonalty of Sadlers case, 30 of the Queen, fo. 54.

BY Mandamus 'twas found before B. Mayor of London, Escheator of the City, and the inquisition was returned in Chancery, that T. C. held of King, &c. and died seised without Heir, the Wardens, &c. shewed their right that R. M. was seised in fee, and devised to them in fee, and that they were seised till by C. disseised, and shew the custom of London, that a Citizen and Freeman may devise Mortmain, and averred that R. M. was, &c. *Temptum mortis*; and upon this, great question was, whether a *Monstrans de droit* lyes; or ought to be by Petition. See the Case at large for this Learning, *Black and Redes* Case was cited to be adjudged. A. be bound in a Recognizance, Statute, &c. after a Recovery in debt was had against him, and dyes, his Executors ought first to pay the Debt at the Recovery, though it be puny to the Statute, &c. for though both be Records, yet the judgment in the Court upon judiciall and ordinary proceeding is more notorious, and conspicuous, and of a high and eminent degree than a Statute, &c. taken private, by the consent of Parties.

Forfe and Hemblings Case, 37 Eliz. in Banc.

fo. 60.

Alice Allen seised of certain Messuages in Fee maketh her will in Writing, and thereby demise-
 teth, that if James Amynd doth survive her, that then
 she doth demise and bequeatheth the same messuage
 to him and his Heirs. And afterwards the said
 Alice did intermarry with the said James, and during
 her Coverture, she said often the said James should
 never have the said Messuage by her said Will, Alice
 dyed without issue, and James survived, and the
 question was, whether the will was countermanded
 by the said Marriage, or not; and if not, whether by
 the words of revocation after the Marriage, was a
 Countermand, and it was adjudged upon great de-
 liberation, that the taking of a Husband, and the
 coverture at the time of her death, was a coun-
 termand of the Will. For the making of a Will is but
 an inception thereof, and it doth not take any effect
 until the death of the deviser. For, *Omne testa-
 mentum morte consummatum, & voluntas est ambula-
 toria usque extremum vitæ exitum*. And it should be
 against the nature of a Will, to be so absolute, that
 he that made the same, being of sane memory, may
 not countermand the same. And therefore the ta-
 king of her Husband, being her own proper Act,
 doth amount to a Countermand in Law: Also 'twas
 said, that after Marriage all the Will of the Wife in
 judgement of Law, is subject to the Will of her Hus-
 band, and a Feme Covert hath no Wills and there-
 fore the countermand after Marriage was of no force,
Quod fuit concessum per totum Cur.

Harlakendens Case, 21 El. in banco regis, fo. 62.

THE Earl of Oxford leased to A. B. and C. (except the Trees) for 21 years, C. assigned D. the Earl sells the Trees to A. B. and D. the Earl leased to E. and after sell the Trees, the Vendor cuts them, the Lessee brings trespass. When man maketh a Lease for life or years, the Lessee hath but only a special interest or property in the Trees being Timber, as things annexed to the Land, but if the Lessee or another severs them, the property and interest of the Lessee is determined, the Lessor may take them, as things which were cell of his Inheritance.

It was also resolved, that this clause (with impeachment of waste) doth not give to the Tenant for life, any greater interest in the Tree, than had by the demise of the Land, but only that it serve, that he shall not be impeached in any act of Waste, or to recover damages or the place waste.

This is adjudged otherwise by all the Judges of England in Lewes Bowels Case in the 11 Report.

It was also resolved that if an House fall by tempest or other act of God, the Lessee for life or years hath special interest to take Timber, need he the same, if he will, if the Lessee suffer the house to rot or take it down, the Lessor may take his Timber as parcell of his Inheritance, and the interest of the Lessee is determined, and he may have waste, and recoverable damages.

Resolved, that the Lessee by the grant had an absolute property in the Trees, so that by the Lease of the Land, they did not passe, and he hath not equal ownership in both, and it should be a prejudice

him if they should be joined to the Land, for then
 he could not cut, during the term, without waste,
 and after he shall not have them, and the Lessor shall
 not have them against his own act. And here A.
 B. and D. were Tenants in common of the Land, and
 co-tenants of the Trees, and so their interest of se-
 verall qualities, and therefore cannot be an union be-
 twixt them, but upon a feoffment, if the Feoffor
 except the Trees, they are in property divided,
 though, *In factto*, they remain annexed to the Land,
 for it is not felony to cut them, &c. and if the Feof-
 for grant them to the Feoffee, they are re-united in
 property, as well as *De factto*, and the Heir shall have
 them, not the Executors, for the Feoffee hath an ab-
 solute ownership in both, and it is more benefit to
 him that they are re-united.

It was resolved, That if Timber Trees be blown
 down with the wind, the Lessor shall have them,
 for they are parcell of his inheritance, and not the
 Tenants for life, or years, but if they be Downed
 without any Timber in them, the Tenant shall have
 them.

It was adjudged, that waste may be committed in
 glasse in the Windows, for it is parcell of the House,
 and descends as parcell of the inheritance to the
 Heir, and the Executors shall not have them, al-
 though the Lessee put the glasse in the Windows
 at his own cost, and if he take them away, he shall
 be punished in waste. And *42 Eliz. in com. Banco*
 It was resolved, that Wainscot, whether it be annex-
 ed to the House by the Lessor, or the Lessee, is par-
 cel of the House, and there is no difference in Law,
 whether it be fixed with great Nails or little Nails, or
 Screws or Irons put through the Walls, for if it be
 fixed by any waies or means to the House or Posts,
 or Walls thereof, the Lessee may not remove it, but
 he

he is punishable in an action of waste. For it is parcel of the House, and by Lease or grant of the house in the same Manner (as Sealing or Plastering) shall pass as parcel thereof.

Fulwoods Case, 35 of the Queen, fo. 64.

C. acknowledged a recognizance of 250 li. to the Chamberlaine of London, and his Successors. After acknowledges a Statute of 200 li. before the Recorder of London, and Maior of the Staple to the effect after A. sues execution by Liberate, but it doth not appear that it was ever return'd, after the Successors of the Chamberlain, sue execution, by writ except to the Serjeant of the Mase in nature of an *Elegit*, and hath a moiety, C. dyes, his Wife recovers Dower, and hath her House assigned for her third part, she dies, the Chamberlain assigns to Fulwood, after A. assigns also to F. after the Heir of C. assigns to B. &c.

Resolved, that the Successors of the Chamberlain shall have this recognizance, though a Body for that the Corporation was by custome to divers purposes, for Orphanage, for the Recognizance acknowledged for Orphanage money, and the same custome enables the Successors to take such an *Orphanage*, &c. otherwise of a Bishop, Parson, &c. and that the Execution by the Serjeant of the Mase, was good, notwithstanding the Statute of W. 1. ca. 11. which saith, *Vic. liberet ei medietatem*, &c. By reasonable extent, to wit, by inquisition of honest men, and the Sheriff is sworn, and the Serjeant is not sworn to take the Jury, &c. For the Statute extends to every other immediate officer, to any Court of the King of Record, &c. Resolved, that execution of the *Elegit* was good enough, without suing a

Scire facias against A. being in by matter of Record; but 'twas said, if the Sheriff had returned the former execution, he ought to have a *Scire facias*; by the Court, if the Sheriff makes execution, 'tis good.

Resolved, that the Verdict was good, which finds that C. acknowledged a recognizance before the Mayor, though not said *secundum formam statuti*, nor, *per scriptum suum obligatorium*, for being the trover of any People, it shall be intended according to the Statute. Resolved, that the Conusee cannot have aide of the statute of 32 H. 8. ca. 5. for which, see the Book at large.

Resolved, that if a man be bound in two statutes, and the latter statute be first extended, and delivered in execution for a longer time, and a greater sum than the first was, yet when the first Statute is satisfied, and his interest lawfully determined, the second Conusee shall have the Land again, by force of the first Extent. It was resolved *Per tot. Cur.* that the Execution of a *Liberate* is good, although the writ be not returned, and so of a *capias ad satisfaciendum*, and an *Habere fac. seisinam*, and other writs of Execution. And that the Conusee should hold the Land, not only untill he be satisfied for damages or retaining of the Debt, and costs of sure, but also for his reasonable Labours and expences; look the words of the Execution; and being in by matter of Record, the Conusor must bring his *Scire facias*; but in case of an *Elegit*, the Conusor after satisfaction may enter, for there is no costs and damages, but he must Debt.

Hyndes Case, in Com. Banco, 33 Eliz. fo. 70.

William Have sold of certain Lands by deed, Indented [demised the same to Robert Gerard

rard for 16 years, who assigned over to Elizabeth
 Hynd. William Hawe afterwards by bargain and sale
 in consideration of money due, sold the reversion
 to one Libb, and before the same was inrolled,
 said William Hawe, levied a fine to Libb, and
 Heirs, &c. and after the levying of the Fine
 said Indenture of bargain and sale was inrolled
 in six Months, according to the form of the
 reure, and Elizabeth Hynd the Tenant did not attain.
 The question was, Whether he Conusee of the Fine
 after the said Indenture inrolled, shall be in
 the Fine, and by the bargain and sale? for if he
 be adjudged to be in by the Fine, no action of
 lyeth, for default of attornment, and if he shall
 in by the Indenture inrolled, then there needeth
 attornment, And it was resolved, *Per tot. Cur.*
 when Hawe by Deed indented, did bargain and
 the reversion to Libb, and his Heirs, and before
 inrollment levied a Fine to Libb, and his Heirs,
 after the Deed is inrolled, (within six months)
 the Conusee shall be in by the Fine, and not by
 Deed inrolled, for the fee simple passeth by the
 to the Conusee and his Heirs, and after the in-
 ment of the Deed may not divest and turn the
 state out of himself, which was absolutely estab-
 ed in him by the Fine, for when the common
 and the Statute Law concur, the common
 shall be preferred. And it is true, that the in-
 ment shall have relation to the delivery of the Deed.
 But that is only to avoid estates, or charges
 of the same thing by the bargainor, to strangers
 the delivery of the Deed, and before the inrollment
 but not to divest any estate lawfully settled in the
 interim, in the bargainee.

The Records are so high and sacred that they
 port in themselves inviolable verity, which

an dare to gainsay, the Law doth attribute so great honor, to them, that they shall be tried only by themselves and not by the Countrey, and if averment against a Record should be permitted, then the effect and validity of the record should be tryed by the Countrey, which is against the rule of the law, *Nul- lum iniquum est in jure presumendum*. Yet, resolved, in this Case, that the Lessee shall be admitted to aver that the Deed was inrolled, after the Fine, and not before, because it stands with the Record, and doth not impugn any thing within the Record, and great inconvenience would follow, if such averment should not be admitted.

Boroughs Case, 38 Eliz. In Banco Regis, fo. 72.

Resolved, that the rent reserved upon a demise ought to be demanded, if the Lessee will take advantage of a condition for non payment of the same, and the demand to be made at the place limited for the payment of the rent, although there be no words of demand in the demise, and although it be out of the Land demised, but in the Kings case it is otherwise. *Pierogativa Regis*, for there the rent upon a re-entry reserved ought to be rendered; and in such Case, the Patentee of the King, shall demand the rent upon the Land.

Resolved, if the Queen leases rendering rent, without limiting any place, or to whose hands, the Lessee may pay it at the Exchequer, or to the Bayliffs or Receivers of the Queen, and when she so appoints it by expresse words, 'tis no more than the Law appointed, and though the words be (*Ad receptum scacc. apud westm.*) it needs not that the rent be holden at *Westminster*, the Law would have implied that. And when a common person ap-
points

points to no place, the Law appoints the payment upon the Land.

Palmer's Case, 39 Eliz. in Banco Regis, fo. 74.

THE Sheriff by vertue of a *Fier. Fac.* may take a Lease of the Defendant, and in his Writing true commencement and term of the Lease be expressed, or else, if he selleth all the land that the Defendant hath in his Lands, he need not to make any mention in the return, but generally *Quod fieri fecit de bonis & catallis, &c.* But an inquisition found that the Debtor of the King was seised. *Pro termino quorundam annorum, &c.* void, for a term cannot be extended without fixing the certainty of the commencement, for the Debt satisfied, he is to have the remainder.

Resolved, for that the Case at Barre was an execution by *Elegit*, which ought to be made by inquisition; the sale here was void, for the term mistaken in the inquisition, and so mistaken was appraised by the inquisition, and the Sheriff cannot take any term, but that only which was appraised by Jurors.

Hollands Case, 39 of the Queen, fo. 75.

RESOLVED, that before 21 H. 8. ca. 13. which had a benefice with cure, accept another with cure, the first is void, but this was no avoidance by the Common Law, but by constitution of the Pope, of which the Patron might take notice. He would, and present, without deprivation; but because the avoidance accrued by the Ecclesiastical Law, no Lapse incurred without notice, as upon deprivation, or resignation; so, that the Church was void.

oid for the benefit of the Patron, not for his disadvantage; But now, if the first benefice be of the value of 8. l. *per annum*, the Patron at his peril ought to present, for to an avoydance by Parliament, every one is party, but if not of 8 l. 'tis voyd by the Ecclesiasticall Law, of which he needs not take notice. Resolved, that 21 H. 8. is such a generall Act, of which the Judges *Ex officio* (though it be not pleaded) ought to take notice. See the Book at large upon this Learning, what act shall be said a general Act: Of which the Judges are bound to take notice, what not.

*The Case of Corporations, 40 and 41 of the Queen.
fo. 77.*

Resolved, that where divers Cities, &c. are incorporated by the name of Mayor and Commonalty, Mayor and Burgessees, &c. and in the Charters 'tis prescribed that the Mayors, Bayliffs, &c. should be chosen by Commonalty and Burgessees, &c. which is as much as to say, as by all the Burgessees, or all the Commonalty; that yet the ancient and usuall Election, by a certain selected number of the principall of the Commonalty, &c. (Commonly called the Common Councell) and not by all of the Commonalty, or so many of them as will come to the Election, was good in Law, and warranted by their Charter; for, in every Charter they have power given to them, to make Laws, Ordinances, and constitutions, for the better government and ordering of their Cities and Boroughs, by force of which, and to avoid popular confusion, they, by their common assent have instituted, &c. that the election shall be by such a select number. And though this Ordinance cannot be now shewn, yet, it shall be

be presumed that such ordinance and constitution was made at first.

Digbyes Case, 41 Eliz. fo. 78.

IT was adjudged, that when a man hath a benefice with cure, above 8 l. and afterwards taketh another with cure, and is presented and instituted and before induction procure the Letters of dispensation, that this dispensation cometh too late by the institution, *Ecclesia plena & consultata* against all persons but the King, for every rector consisteth upon spirituality and temporality. As to the spirituality, *Viz. cura animarum*, he is complete Parson by the institution, for when the Bishop upon examination had, admitteth him able; then he doth institute him, and saith, *Instituo te ad tale beneficium, & habere curam animarum*, of such a Parson, *accipe curam tuam, &c. Vide 33 H. 6. 13.* But touching the temporalities, as the Glebe Lands, &c. he hath no freehold in them, until induction, for by the general Councell of Lateran, *Anno Dom. 1215.* it appeareth, that by the acceptance of two benefices the first is void: *Aperto jure*, for upon this Councell our Books in this Case founded. And 'twas resolved, that this was an exception of a benefice, *cura*, within the Statute of 21 H. 8. Institution is an acceptance by our Law, and 'twas lately adjudged that if before induction, the Clerk be inducted into another, the first is void by 21 H. 8. which saith (*acceptum et tale alterum*) and for that now the avoidance is declared by 21 H. 8. he is bound to take notice, till after induction, &c.

Nokes Case, 41 Eliz. fo. 80.

A Man maketh a Lease by these words (*viz.*)
 Demise, &c. Grant, &c. and Covenant that
 the Lessee shall enjoy without ev. tion, by the Let-
 sor, or any claiming under him, and was bound to
 perform all Covenants, &c. the Lessee assigns his
 term, a stranger enters upon the Assignee, and re-
 covers in an *Ej. firme*, after ouster, the first Lessee
 brings Debt. This is a Covenant in Law, and the as-
 signee shall have a writ of covenant, 9 Eliz. 257.
 Dyer. And if a man be bound by obligation to per-
 form all covenants, grants, &c. This doth extend
 as well to Covenants in Law, as to Covenants in
 Fact.

Resolved, though the recovery were by verdict,
 yet he ought to shew that the Plaintiff in this re-
 covery had an elder Title, for otherwise the Cove-
 nant in Law is not broken. It was holden that an
 expresse Covenant doth qualifie the generality of
 the Covenant in Law, and restraineth that by the
 mutuall consent of both parties, but a warranty in
 Law, and an expresse warranty, the party may choose
 whether he will have, for this word *Dedi* importeth
 a warranty.

Sir Andrew Corbets Case, 41 and 42 of the Queen,
 fo. 81.

A Devises Land to B. &c. to have &c. till 800 l.
 shall be paid by them of the profits to marry
 his Daughters, and dyes, the Heir conceals the
 will, takes all the profits, and dies, the Will is found
 by office, the Devisee enters, and hath levied 640 l.
 and employs it accordingly; whither the profits ta-
 ken

ken by the Heir shall be parcell of the 800 l. the question.

Resolved, that the words (shall be leavyed) shall be construed (shall or might be leavyed) so twas holden of a Lease or limitation of a use otherwise, he which is to leavy the summe, by doing to do it, may exclude the reversioner for see the Book at large. Resolved, when the Heir reversioner, &c. enters, and expulses him, to whom the Land is limited, he hath election to recover the Mesne profits, in an action, or reentry, and retain till he levies the intire summe, and the other shall not have advantage of his own wrong, and if a stranger had entered, and occupied, the Devisee ought to have taken notice at his perill, for *vigilantibus non, &c.* and none is bound to give notice, but the Heir himself concealed the Will, and the Devisee had no remedy, for the Mesne profits at the death of the Heir, Resolved, that a Gardian shall not ouste Tenant for life, nor years of the Tenement.

Resolved, that admitting the Gardian shall ouste Tenant for years, yet he shall not hold over, because his term is certain in the commencement, continuance and end; otherwise of Tenant by *Elegit*, *Scutage*, &c. they shall hold over, because the term is uncertain.

Southcots Case, 43 Eliz. In banco regis, fo. 83.

IF A. do deliver goods to B. for to keep, the goods be purloyned away, yet B. shall be charged in a Writ of detinue. For, to keep, and to keep safely is all one, but if B. do make them to keep his own goods, he shall not be charged with them. And if A. do pledge or gauge goods unto B.

his case B. shall not answer for them, if they be purloyned, for he had some property in them, and not custody only, but a ferry-man, a common Inkeeper, a Carrier, which taketh hire, they ought to keep the goods safely, and they shall not be discharged, if they be stoln or purloyned. But a Factor or a Servant, (although they have wages) doing his endeavour, shall not be charged.

Luttrells Case, 43 Eliz. Banco Regis, fo. 86.

If a man have Estovers, either by grant or prescription to his house, although he alter the Roomes, and Chambers in his House, it seemeth that the alteration of the qualities, so as it be not of the house itself, and without making new Chimneys, by which no prejudice accreus to the owners of the Wood, nor any destruction of the prescription, and though he make new Chimneys, or make a new addition to his old house, he shall not lose the prescription hereby, but he may imploy or spend any of his new Estovers in the Chimneys, or in that part newly added. It was also resolved, that if a House or Miln do fall, or be taken down by the act of the owner, or by wrong of another, yet for that the perdurable part which includes all, doth remain, which is the Land, whereupon the Fabrick is built, he may re-edifie the same again without any losse of his appendant or appurtenant, but it ought to be upon the same place which was the foundation of the old House, for as it is support, and judgement of Law included the ancient House when it was standing, so it imports and includes the new House, so as it is in a manner a continuance of the ancient House.

Divers Tenants do hold of another, as of h

M

Ma is

Mannor by fealty and sure to the Lords Miln, Lord doth alien his Miln with the sure of his tenants, and after, the Vendor dieth, and his Surentereth and buildeth a new Miln upon the Parts of his demean, he shall have the sure to his Miln, which the Vendee had before, for the sure longeth to him that hath the Mannor, for no man may have sure to his Miln, by reason of a Tenure it be not of Corn growing upon the Lands, nor the Seigniorie or Mannor, and the Lord may make new Miln within any part of the Mannor, and the Tenure is due to the same, and not to any particular Miln.

Drurics Case, 43. Eliz. Error in Banco Regis, f. 10.

A Countess being a Widdow retaineth three Chaplains he who is last retained, is not excused of a dispensation, for the statute of 21 H. 8. c. 13. executed by retaining of two, and the retaining of the third shall not divest the capacity, which was in the first two, but if the Retainer had been at one time he who is first promoted, shall be first preferred in cause in *Aquali jure*, &c. 2. Resolved, if the first die, the third is not capable of a dispensation without a new retainer, because he was retained by the common Law, and not according to the Statute. *Quod ab initio non valet*, &c. As if the Son of a Baron retaineth a Chaplain, and giveth his letters under his Seal, And after the Father dieth, it was said, that the said act shall be taken as if a Baron be made Gardian of the five parts, shall retain no more Chaplains than before, and the Baron retain two Chaplains who are promoted cannot discharge them, and retain others, during their lives.

Slades Case, 44 Eliz. fo. 92.

It was resolved, that every contract executory imports in it self an assumpsit. For when one doth agree to pay money, or to deliver any thing, by that he doth assume, or promise to pay or to deliver the things, and therefore when he selleth any goods to another, and agreeth to deliver them at a day to come, and the other in consideration thereof agreeth to pay, so much money, at such a day; in this case both parties may have an action of Debt, or Action upon the Case, upon the assumpsit, for the mutuall executory agreement of both partys, import in themselves as well a reciprocall Action upon the case, as an Action of debt and a recovery or barre in an action of debt, is a good bar in an action upon the Case, brought upon the same contract, and so likewise in an Action upon the case, a recovery, or Barre in the same, is a good plea in an action of Debt, upon the same contract.

The Defendant in an action of the case upon the assumpsit may not wage his Law, as one may do in an action of debt.

If a summe of money be promised in Marriage to be paid at several daies, an action upon the assumpsit lieth for non payment of the first, although no action of Debt lyeth, untill all the daies be past, *Muldo errantium non parit errori patrocinium*, and if the Petitioner of the King sueth by *Quo minus*, in the Exchequer, the Defendant shall not have this Law for the benefit of the King.

Adams and Lamberts Case, 44, and 45 Eliz. in Banc Regis, in Ejectione firmæ, fo. 104.

UPon consideration of the Statute of 1 E. 6. 14. it was resolved.

1. That if one demise to any of his Kindred, superstitious uses, although he limit them to pay certain Sums of money to the said uses, yet these are given to the King, for it shall not be intended be upon other consideration, but that which they at that time conceived to be the Service of God, which is the most worthy consideration, & the reason wherefore the demise was made to his friends was, because he imposed more trust in them than others, therefore the persons shall not be regarded.

2. A demise of an estate for life, or in tail is within the Statute by equity, although that the Statute says *To have continuance for ever*, for the intent of the Statute was to toll such uses, and regardeth not the length of their continuance.

2. An estate taile may continue for ever, as was the intent of the devilor in this case, that the estate should continue for ever, for he limits his Heir forever. 3. Without this construction the Statute should be defrauded.

3. The Statute giveth to the King, Lands given upon the finding of a priest, and giving of lands upon condition to find a Priest is within the Statute, for this is more compulsoy than the other.

4. All the Land is given to the King, but only by the first Branch, for that extends only to full Chanteries, or those who have countenance by lawfull commencement, but not to such who are without any colour of lawfull commencement; as if a

ere founded by license of the Pope, his Chantry is
without colour of lawfull comencement or foundati-
on; also if Lands be given to the finding of a Chan-
try without Corporation, this is out of the said
branch. Neither by the second Branch, for that
with the Lands belonging to such Colleges to the
King, without which, he shall only have the Scires;
nor by the third Branch; for this extends to finding
of a Priest without Coporation. But 'twas objected,
that the land was not given to the finding of a Priest,
for he had but a pension out of it, and the Statute is,
that the King shall have in as large, &c. as the Priest
had it. 1. Here is a good use limited, six pence by
the Week to six poor men, and although it be
in writum, &c. this is not within, for it is out of the
statute, except that Orisons be to be performed in
publicque. For answer to these: these difference
were taken, 1. If one give 20 *l. per annum*, for the
finding of a Priest, and limit to the Priest 10 *li. per*
annum all is given to the King, for the residue shall
be intended for the finding of necessaries: otherwise
it is, if a condition be annexed to the gift, to give 10 *l.*
per annum to a Priest, there the King shall have but
10 *l.*
2. Land of 20 *l. per annum* is given to find a Priest,
with 10 *l.* thereof, and that the other tenne pound
shall be to the Poor, the King shall have but tenne
pound, but if it be for finding a Priest, and main-
tainance of Poor men, without limitting how much
the Priest shall have, the King shall have the Land,
or otherwise he shall have nothing. 3. If land of 10 *l.*
is given for finding Sallary for a Priest with 10 *l.* of
it, and also a good use is limited, there the King
shall have but ten pound, although the other neces-
saries are to be bound for the Priest, because a good
use in certain shall be preferred before a superflui-

ous uncertain use; but if nothing in certain be limited to the Priest, the King shall have the Land. If Land be given to find a Priest, the King shall have it, but if a Priest have but a stipend, the King shall have but the stipend. 5. When a certain sum is limited to a Priest, and other good uses are also limited, which depend upon the superstitious use, all is given to the King. 6. If all the uses be superstitious of what certainty soever they are, the land is given to the King, otherwise it is, if there be any good use and as to that which was objected, that the King shall have no more than the Priest, It was answered that that extends to the 1, 2, and 4. Branches, and not to the third, for otherwise the King should never have the land it self, for this was never used to be limited to the Priest himself.

And although that these Orisons are to be said out of any Church, yet it is within the statute, for the words, Church or Chapell, extend to Lampes, Lights, and not to Prayers. 2. The statute speaks of anniversary, &c. or other like thing, and not of a like thing, but in the Case at Bar, if he had said that his friends should have the residue of the profits of the land, this had saved the Land.

*Actions Case, 45 Eliz. com. banco in a
Quare impedit, fo. 117.*

A Noble Woman reteineth a Chaplain, who after she chaseth a dispensation, she taketh a Husband, and the Chaplain is promoted to another benefice than that which he had before the reteiner, his first benefice is not void.

It was Objected that the statute speaks of Widows, &c. being widdows or married under the degree of a Baron, and for that, when she marrieth

ve the degree she is out of the Statute, and is not sufficient that she is within the Statute, at the time she receiveth, but she ought to be so also at the time of the promotion.

It was answered, that all which the Statute requires at the time of the receiver, is, that she be a Noble woman, Married under the degree of a Baron, or a Widdow, and to be Noble at the time of the promotion; therefore a Noble Woman Married above the degree, cannot receive, or if at the time of that promotion she be notable, as if her Earl be tainted, and although the Baron and Feme have but one body, yet they have two souls, wherefore it is not inconvenient that they should have severall Chaplains, and the reason for which the said provision was made for a Noble Woman who married a Noble Husband, was not to exclude those who married Nobles, but because such Femmes are in Law ignominious (except they be Noble by descent) and without such provision shall be out of the Statute. Baron receiveth a Chaplain and dieth, the Chaplain may receive both the benefices, but he shall be punished for non-residency, without suing a non obstante.

Dumports Case, 45 Eliz. Banco Regis in Trespass, fo. 119.

A Man maketh a Lease, provided that the Lessee or his assigns shall not alien the premises without speciall license of the Lessor, &c. The Lessor giveth license to the Lessee to alien the same, or any part thereof, &c. In this case the lessee may alien and his Assigns, *Ad infinitum*, without any more license, and the proviso is determined.

The Lord Stafford made a Lease to three persons upon condition that they, nor any of them should alien, without the consent of the Lessor, and when one of them did alien with his consent, and when the other two did alien without license, and it was adjudged 28 Eliz. that in this Case, the condition being determined, as to one person, by the license of the Lessor, it was determined in all, for when the Lessee alieneth any part of the residue, the lessor may not enter into any part aliened with license, & therefore the condition being determined in part, is determined in all, for the condition being intire, may be apportioned, and 16 Eliz. Dyer. 334. *just den Popham Chief Justice*, Vide lit. 80 b. & 4, & 5 and M. Dyer 152. *Idem* 701 not a 1. ad hunc.

Bastards Case, 1 Fac. fol. 121.

IN every lawfull exchange of Land, this word *Cambium* imports in it self *Tacite*, a condition of warranty, and the other a Voucher and recompence, and in all respects of reciprocal consideration, the land being given in exchange for the other, but it is a speciall warranty, for upon the Voucher he may not recover other Lands in value, but those which were given in Exchange, and this warranty follows only in privy, for none may vouch by force thereof, but the parties to the Exchange, and their heirs, and no assigns.

If A. give in Exchange three acres of land to B. for other three acres, and after one acre is evicted from B. in this Case all the Exchange is defeated, and he may enter into all his Lands.

Beverleys Case, *de non compos mentis in Banco Regis,*
1 Jac. fol. 123.

Every Act that a man *De non compos mentis* doth either concerns his Lands, Life, or Goods, either done in Court of Record, or out of Court of record, all acts that he doth in any Court of Record either concerning his Lands or goods shall bind himself and all other for ever, and those acts which he doth out of the Court of Record, shall bind himself during life, and in some Cases shall bind all others for ever, so as the party himself shall not be admitted to stultifie himself or disable himself, but an Ideot a *nativitate* may not make Feoffment, Gift, Lease, or Release, but it may be avoided, during his life, by office at the Kings sute, which shall have relation, a *tempore Nativitatis*, to avoid all acts done by him, and after his death the King shall deliver his Lands *Reftis Hæredibus*, four manner of men, *de non compos mentis*. 1. An Ideot or Fool naturally. 2. One which was of good and perfect memory, and by the visitation of God hath lost the same. 3. *Lunaticus, qui gaudet lucidis intervallis*, who sometimes is of good & perfect memory, and some other times, *Non compos mentis*. 4. He that is so by his own act as a Drunkard.

All acts, which a Lunatick during the time of his Lunacy doth, & all acts which a mad man doth, who once was of perfect memory, and by the act of God, hath lost his understanding, are equivalent to the act done by an Ideot, but the act which a man doth *Qui Gaudet Lucidis intervallis*, at such times as he is of good and perfect memory, shall bind him and are good. And a Drunkard who for the time of his Drunkenness is *Non compos mentis*, yet his drunkenness

ness shall not extenuate his act or offence, but doth aggravate his offence, and doth not derogate from the act, which he doth, during the time of his drunkenness, and that as well touching his Life, Land, and Goods, as any other thing that concerns him. The King shall have the custody of the Land, goods, Chattels, &c. of one *non compos mentis*, to the use of him, his Wife, children, and family, a man *non compos mentis*, shall not lose his life for felony or murder, for no felony or murder can be committed, without a felonious intent and purpose, and he is deprived of reason, understanding, and intentions, *Dicta est felonia quia fieri debet felleo animo, & furiosus non intendit quid agit, & animo & ratione caret, & non multum differt a brutis*, as Bracton saith, and *stultus dicitur propter defectum sensus*.

The End of the fourth Book.



THE



THE FIFTH BOOK.

Claytons Case, 37 Eliz. in Com. Banco, fo. 1



N Indenture of demise dated 26 May 25 Eliz. to hold for three years from henceforth, it was delivered at four a clock in the afternoon, of the 20th of June after, The question was, when the Lease should begin, from henceforth shall be taken the day of

the delivery *inclusive, id est*, from the making or delivery.

Traditio loci facit cartam, this Lease must end the nineteenth of June, in the third year after. The day of the delivery is parcell of the term, but *a die confessionis*, or *die datus*, the term beginneth the day after the date, from the date, and from the day of the date is all one, because that in judgment of Law, the day includes all the day of the date, &c.

Elmers Case, 30 Eliz. Banco Regis, fo. 2-

RESolved, that the Statute of 1 EL. is a private Act, whereof the Court shall not take notice, without pleading of it. 2. Whereas the Bishop ousted his Lessee, for years, and made a Lease for three lives, this is voidable by the Successor; for, first, the Statute giveth him power to make a Lease for

for twenty one years, or three lives, and therefore cannot make both. 2. Lessee for lives shall have the rent reserved upon the lease for years, and shall pay rent to the Bishop, untill the term determined, and so hospitality will decay in the mean time, as where 32 H. 8. ca. 8. provided that the old lease surrendered before the making of a new, illusive surrender upon condition is not within the act, by judgment given against the Plaintiff for not pleading of the said act of 1 Eliz.

Jewels Case, 39 Eliz. Banco Regis, fo. 3.

LEASE of a fair reserving rent, is not within the Statute of 1 Eliz. for although the rent be by reason of the contract, yet it is not incident to reversion, and 'tis also without remedy by assize or distress.

Lord Mountjoyes Case, 31 and 32 El. Banco Regis, fol. 3.

TENANT in taylor according to the Statute, who hath power to make Leases, &c. reserving the ancient rent, maketh a Lease of two distinct farms, reserving the ancient rents in one summe, out of both farms, this is a new rent, and not the accustomed rent, and if he reserve a lesser rent (during his life and after his death) then the ancient rent, the lease is not good.

If Tenant in taylor be seised of three acres of land, every one of them of equal annuall value, and all have been demised for three shillings per annum in this Case he may not demise one of them for one shilling per annum, or two of them for two shillings per annum, and so *Pro rata*.

Justice Windhams Case, fol. 31, and 32 Eliz. Banco Regis, in a Writ of Error, fo. 7.

A Man leaseth S. for ten years, and C. for twenty years, and both to another for forty years, after the end of the said severall demises, ten years expire, the last Lessee enters into S. and upon ouster brings trespass and recovereth, for the joint words of the parties shall be taken, *Respective*, and the leases shall commence severally, upon the several determination of the said leases. Joint words shall be taken severally. 1. In respect of the severall interest of the grantors, as of two tenants in common grant a rent-charge. 2. in respect of the severall interest of the grantees, as a joint warranty to two several tenants. 3. In respect that the grant cannot commence at one time, as a remainder limited to the right Heirs of S. and I. N. 4. In respect of the incapacity of the grantees, to take jointly. 5. *Ratione subjectæ materiæ*, as rent granted to two copartners for equality of partition. 6. *Ne res destruat, & ut evitetur absurdum*, as in *cessavit*, the tenure is alleged by homage, fealty, and rent, and *quod in faciendis servitiis prædictis cessavit*, and it shall be construed to such services only, as of which a man may cease.

Brudenels Case, 34. Eliz. Banco Regis, fo. 9.

IF a Lease be made to A. during the life of B. and C. without saying, during the life of the Survivor of them, if one of them dye, yet the estate is not determined. But A. shall have the Land during the life of the Survivor; for if a man make a Lease of Land to two persons, during their lives, they assign
over

ver their estate, now the assignee hath estate for
 of them too, and if one dye, he shall have the Land
 during the life of the Survivor. Note, two diversities
 th'one a limitation in this case aforesaid, the other
 a condicion, for if a man demise Land for 100 years
 if A. and B. live so long, in this case, if th'one of them
 dye, the Lease is determined, for the Lease is con-
 ditionall, and not determinable by limitation of estate
 and the life of a man is collaterall to the lease which
 is but only a chattel. If an Administrator have judgment
 and dye, his Executors cannot sue execution on that
 judgement, but he that shall be subject to the
 payment of the debts, of the first intestate, and they
 are not the executors of the administrator. *vide* 21
 8. fo. 7.

Hensteads Case, 36 & 37 Eliz. com. banco, fo. 10.

A Feme lessor or lessee at will taketh a Husband,
 will is not determined, for it may be prejudicial
 to the Husband to have it determined: So if one
 the lessees, or lessors at will dye, but in case where
 one of the joynt Lessees at will dyeth, nothing shall
 viveth but the others shall pay all the rent.

Ives Case, 39 & 40 Eliz. com. banco, fo. 11.

I. Leaseth a Mannor to S. for thirty years, except
 ing Wood, and Underwood, growing upon it, and
 after leased to him the Wood for 62 years, with-
 out impeachment of waste, and leaseth to him the
 Mannor for thirty years, after expiration of the first
 thirty years, thirty years expire, S. make waste
 I. bringeth an action of waste. Is Solved, by the
 exception of Wood, and Underwood, the soyle
 excepted and the Woods growing, &c. are of aban-
 danc

dance. 2. The wood remains parcel of of the Manor, because the Lessor had the intire freehold, otherwise if he had leased for life with such an exception, so if one lease a mannor excepting the advowson for life, the advowson is in grosse for life, but if he grant the advowson for life, it remains appendant. 3. By the acceptance of the third Lease, the said Lease of the Wood for 62 years, was presently surrendered, because the Lessee hath affirmed the Lessor to be able to Lease.

*Saunders Case, fo. 12. 41 Eliz. com Banco.
In an Action of waste.*

If a man have land, in part wherof there is a Coal Mine appearing, and he demise the land to another for life or years, the Lessee may digge for Coal, &c. And the reason is, for that the Mine is open at the time of the demise, &c. and when he demiseth all his Lands, it shall be intended, that his meaning was that all the profit of the Land should passe, &c. but if the Myne be not open, but within the bowels of the Earth, at the time of the demise, 'tis otherwise.

Also if a man have in his lands, hidden or unknown Mynes, and Lease the same Lands and all Mynes therein, the Lessee may dig for them.

Rosses Case, 41, & 42 Eliz.

A Lease is made to A. and his assigns, for his life and the life of B. and C. this is a Lease for three lives, and the Survivor of them.

countesse

Countess de Salops Case, fo. 13. 42, & 43 Eliz.
Banco Regis.

SHe brought an Action of the Case against *Cromwell*, and declared, that she demised to him a House at will, *Et quod ille tam negligenter & imprudenter sustodivit ignem suum quod domus illa combusta* the Defendant pleaded, *Non culp.* and it was found not guilty. And 'twas adjudged, that for the permissive waste, no action lyeth against the opinion *Brook*, in title waste, 52. & the reason of the judgment was, for that at the common Law no remedy lyeth for waste either voluntary or permissive, against the Lessee for life or years, because the lessee hath an interest in the Land by the act of the Lessor, and it is his folly to make such a Lease, and not to restrain him by Covenant, Condition, &c. And by the same reason Tenant at will shall not be punished for permissive waste: But if Tenant at will commit voluntary waste, as pulling down of Houses, cutting down Trees, a generall Action of Trespas lyeth against him, for that these do amount to the determination of the Will, without the Entry of the Lessor, but it was agreed, that in some cases where there is confidence put in the Party, an Action of the Case lyeth for negligence, although the Defendant cometh to the possession by the act of the Plaintiff, 12 E. 4. 13. If one do commit his Horse to another to keep safely, the Defendant *Equum illum tam negligenter custodivit quod ob defectum bonæ custodiæ interit* an action upon the Case lyeth for this breach of trust, also 2 H. 7. 11. If my Shepheard which I trust with my Sheep, and by his negligence they are drowned or otherwise perish, an action upon the Case lyeth against him; but in this Case at the Bar

ere was a demise at will made to the Defendant, and no confidence reposed in him; wherefore it was ordered, that the Plaintiff should not recover by her will.

Case of Ecclesiasticall Persons.

43 Eliz. fo. 14. In the High Court of Parliament.

At a Parliament holden in this Michaelmas term it was resolved by the two Chief Justices, Poppe and Anderson, and divers other Justices assizes, to the Lords of the Parliament, in the upper-house, that Leases made to the Queen, by Colleges, Deans, and Chapters, or any other, having spiri- all or Ecclesiasticall Livings, against the provisi- of the Act, 13 Eliz. ca. 10. are restrained by the same Act, as well as Leases made to common- sons, for they are disabled by Parliament to make- res, the King being the head of the Common- alth may not be an Instrument to defeat the pro- on of an Act of Parliament made, *pro bono pub-*

For though the Queen by the Common Law, ability to take it, yet in so much the Parliament disabled them to make states, estates made to Queen against the act, are void.

Covenants, &c. Concerning Lea- ses, Assurances, &c.

Spencers Case, 25 Eliz. Banco Regis, fo. 16.

Lessee doth Covenant for himself, his Exe- cutors, and Administrators, with the Lessor,

N

that

that he, his Executors or Assigns shall build a Wall upon parcell of the Land demised, &c. wards the Lessee assigns over his term to B. In Case B. is not bound to build the Wall.

When the Covenant extends to a thing *In esse*, parcell of the demise, then the thing to be done by of the Covenant is *Quodammodo*, annexed and appurtenant to the thing demised, and shall run with Land, and bind the Assignee, although he be bound by expresse Covenant. But when the Covenant extends to a thing which had not essence, at time of the demise made, that cannot be appurtenant, or annexed to a thing which had not essence. As if a Lessee Covenant to repair the Houses to be demised, during the term, this is parcell of the tract, &c. and shall bind the Assignee, although he be not bound expressly by the Covenant. But in Case, the Covenant concerns a thing which had not essence at the time of the demise, but to be made, and therefore it shall bind the Covenantor, his Executors and Administrators, and not the Assignee for the Lord will not annex the Covenant to a thing which had not essence. It was resolved in this case if the Lessee had Covenanted for him and his Assigns, &c. that in as much as it was to be built upon the thing demised, it should bind the Assignee by expresse words. Also, if a warranty be made by his Heirs and Assigns, by expresse words, the Assignee shall take benefit thereof, and have a *warrantia cartæ*.

But although the Covenant be for him and his Assigns, yet if the thing to be done be merely laterall to the thing demised, and do not concern the same, the Assignee shall not be charged; as if a Lessee Covenant for him and his Assigns to build a house upon the Land of the Lessor, which is not

all of the demise, or to pay any collaterall Summe of money to the Lessor, or to a Stranger, this shall not bind the assignee. Also in a Case of goods, as sheep, Cattell, &c. there is not any privity or reversion in the Assignee, but merely a thing in action the personalty, which cannot bind any but the tenant, his executors or administrators which do represent him. The same law is, if a man demise lands for years, with a stock of Cattell, or Summe of money, and the Lessee Covenants for him, his executors, Administrators, and Assigns, to deliver the Stock of Cattell, or the summe of money, at the end of the term, yet the Assignee shall not be charged with the Covenant.

This word (*Concessi*) or (*Demisi*) imports a Covenant, and if an Assignee of a lessee be evicted, he may have a Writ of Covenant, so shall Tenant by statute, *Elegit* of a Term, or he to whom the Lease is sold in force of any execution, &c.

If a man grant to a Lessee for years, that he shall have so many estovers, as shall serve to repair his house, or that he shall burn within his House, or do like during the Term, that is appurtenant to the Land, and shall run with the same as a thing appurtenant, in whose hands soever the same come.

Assignee of an Assignee, Executors of an Assignee, **SIGNE S** of Executors, or Administrators of every Assignee, may have action of Covenant, all are comprised within this word (*Assignee*) for the same right that was in the Testator, and shall go to the Executors or Administrators.

It was resolved, that the act of 32 H. 8. c. 24. extendeth only to Covenants which touch the thing demised, and not to collateral Covenants.

Slingsbyes Case, 29 Eliz. fo. 18. Upon error, in the Exchequer Chamber.

IF any party Covenantor in a Tripartite Indenture break Covenant, all the rest of the parties, Covenantees, are to maintain the action, notwithstanding the words of the Covenant, are *Et ad et cum libet eorum*. But if a man demise to A. black Acre to B. white Acre, to C. green Acre, and Covenant with them, and every of them, in this Case, in respect of the severall interest by these words, *And every of them*, the Covenant is made severall, but if the demise be made to them jointly, then these words of the Covenant (And every of them) are void.

A man cannot bind himself to three, and two of them, to make that joint and severall Election of severall persons, for one self same, for the Court will be in doubt for which of them to give judgment.

It was resolved, that an interest cannot be granted jointly and severally, if a man grant, *Pro am advocacionem*, or make a Lease for term of years, Land to two jointly and severally, these words severally are void, and they are jointenants; but if power and authority may be jointly and severally, to make livery, or to sell, for they have no interest in the Action, but are as Servants to others. And judgment was reversed.

Roswells Case, 35 Eliz. fo. 19.

BArgainor of Land covenanteth to make Bargainee such assurance as his Councell advise, the Bargainee himself cannot devise

though he be learned in the Law, for then it would be no good plea to say, *Quod consilium non dedit advisamentum.*

Higginbottoms Case, 35 Eliz. Banco Regis, fo. 19.

A Parson assumeth to I. S. to make him such an estate in a Rectory, as the Councel of the said I. S. shall devise, the Councell shall be given to I. S. and he shall notifie it to the Parson.

Stiles Case, 38 Eliz. Banco Regis, fo. 20.

A Charter with the words *Hæc Indentura*, without a manuell Act of indenting of the paper or parchment, is not an Indenture.

Sir Anthony Maynes Case, 38 Eliz. fo. 20. Error in Banco Regis.

Mr A. M. Leaseeth to S. for twenty one years, and bindeth himself to make a new Lease unto him, upon surrender of the old; and Leaseeth to another for 80 years by fine, Scott the first Lessee bringeth debt, and had judgement. If you be bound to enfeoff one in the Mannor of D. before such a Feast, if you make a Feoffment to another of this Mannor, before the same Feast, you have forfeited the obligation, although that you purchase the Land again, before the said Feast, because that you were once enabled to make the Feoffment.

If a man Lease a Mannor for years, and the Lessee covenanteth to uphold the Houses, and to leave the same Mannor in as good an estate as he found it, and during the term, the Lessee maketh wast in houses, and cutting of Timber, &c. the Lessor may have

182 *Laughters Case.*
have a Writ of Covenant, before the end of
Term, for cutting of the Timber, for it was impos-
sible that the Covenant should be performed after
the Timber, but otherwise of the Houses, *Fitz. N.
br. fo. 145. K.* It was also resolved, that if a man
sed of Lands in Fee covenant to infeof I. S. upon
request, and after he maketh a feoffment of the same
to a stranger, in this Case I. S. may have an action
of Covenant without request.

Laughters Case, 37 Eliz. fo. 21, Banco Regis

VHere a condition of an Obligation consisteth
upon two parts in the disjunctive, and both
possible at the time of the obligation made, and if
one of them becomes impossible, by the Act of God
the Obligor is not bound to perform the other part
for the condition is made for the benefit of the obli-
gor, and shall be taken most beneficially for him.
he had an election either to perform the one, or
other, for the saving of his Obligation, but now
potentia excusat legem.

Hallings Case, 47 Eliz. Com. Banco. fo. 22.

One Covenanteth to make an estate in Fee
costs of the covenantee, the Covenantor is bound
the first Act, *Id est*, to notify what assurance he
make, that the Covenantee may know what sum
render.

Mathewsons Case, 39 Eliz. Com. Banco, fo. 23.

Severall persons make severall Covenants in
Indenture, or Writing, the Seal of one of them
is broken away, that shall not avoid the Covenant

the rest, but only the Covenant of him; whose
is so debrused, or defaced, *Vide Piggots Case*,
in the 11 Report, because severall Covenants, other-
wise if joint.

Lambes Case 41 Eliz. Com. Banco, fo. 23.

Is bound unto B. to give unto B. such a release
&c. before the 22 day of October, next, as by the
Judge of the Prerogative Court is thought fit. In this
case A. must procure the Judge to do it, or devise it,
or the Judge is a stranger to the Condition, and the
condition is for the benefit of the Obligor, and he
hath taken upon him, to perform the same at his pe-
ril, but it is otherwise if the Obligor, or his Counsel
should devise it.

Broughtons Case, 43 Eliz. fo. 24. Banco Regis.

In an action of Debt by Broughton Plaintiff against
Pretty, upon an Obligation, with condition, where
the Plaintiff was bound in an Obligation of 200 l.
for the Defendant, for the payment of 100 l. to
C. if therefore the Defendant should save and keep
harmless the said Broughton, from all Sutes, quar-
rels and Demands, touching the said Obligation,
&c. that then the Obligation to be void, &c. at the
day of payment of the 100 l. the Plaintiff com-
meth to the place where the 100 l. ought to be
paid, and perceiwing there not any person present
to pay the 100 l. for the Defendant, Broughton to
have the penalty of the Obligation, paid the money
to C. and brought his Action upon the Counter-
bond, and it was adjudged that the Plaintiff should
recover; for the payemnt of the 100 l. is damage
and harm. And it is not necessary, whether the
N 4 Plaintiff

Plaintiff was arrested or sued, &c. Terror officii (so as he dare not go about his business) is damages, although he be not arrested.

Dean and Chapter de Winsors Case, 44 Eliz. fo. Banco Regis,

A Man Leased a House by Indenture for years, Lessee Covenants and grants for him and his Executors with the Lessor, to repair the House at times necessary, the Lessor assigns over, and the assignee suffereth the house to decay, the Lessor brings an action of Covenant against the Assignee, and was adjudged *per Popham* and all the Court, that the action lyeth although the Lessee had not covenanted for his assigns, because in respect thereof the house is the less, which is, for the benefit of the Assignee.

Qui sentit commodum sentire debet & onus. If a man grant one Estovers to repair his house, this is appurtenant to the house, *Fitz, H. nat. br. 181. 28 H.*

Sir Thomas Palmers Case, 43 El. fo. 24. Banco Regis,

Sir Thomas Palmer seised in fee of a great Wood, did bargain and sell to one Cornford, and assigns 600 cords of Wood, to be taken by assignment of Sir Thomas, Cornford assigns his interest to one Bassett, and afterward Sir Thomas sells to one Maynard such quantiry of Wood as will make 600 cords at election of the Vendee; and afterward Sir Thomas assigns to Bassett 600 cords of Wood, to be taken by him, who doth sell the same, and Maynard did take them away, and converted them, and an Action upon the case was brought by Bassett, and judgement was given for him, for Cornford had

interest which he might assign over, and not a thing in action, or a possibility, for it was resolved, if Sir Thomas did not assign them to Cornford upon request, Cornford might take them without assignment, for the Grantor cannot by his own act or default, either subvert or derogate from his own grant. Therefore it ensueth, that Cornford had an interest that he might assign over. If A. have a house and land, and reasonable estovers in the woods of another, by view and livery of the Bayliff, &c. if A. take estovers without view or delivery, &c. he is a trespassor, although he take less than he ought to have by livery. But if he demand his estovers, and the Owner of the Bayliff will not deliver to him, he may have an assize. 2. If the assignment were void, yet the Defendant cannot take Trees cut by another, but out of the residue of the Wood.

The Earl of Rutlands Case, 2 Ja. fo. 25. Banco Regis.

Edward Earl of Rutland seised of the Mannor of Eythering, by Indenture dated 15 March. Anno Eliz. for augmentation of the joynture of Issabell Countess, did Covenant with Sir Gilb. Gerrard, and Thomas Houlcroft his Brother, that before the end of Trinity term, then next following, he would assure by fine or other conveyance, the said Mannor to the said Sir Gilb. Gerard, and Thomas in Fee, which Fine or other conveyance, should be to the use of the said Earl, and Issabell his Wife, and the Heirs of the said Earl, which Indenture was acknowledged and inrolled in the Chancery, the 28 of the same Month of March, by another Indenture between the said Earl on the one part, and the Lord Burtleigh on the other part, and Sir Gilb. Ger. & others on the same parr, for the advancement of the Heirs

Heirs Males, of the said Earl, the Earl did Covenant, &c. to convey the said Mannor amongst others to the said Lord *Burleigh*, Sir *Gilb. Gerard*, and others or to any of them, before the Feast of the Annunciation of our Lady next ensuing; which assurance should be to the use of the said Earl *Edward*, and his heirs males of his body, and for want of such issue, the use of the Heirs Males of *Thomas Earl of Arundel*, with divers remainders over, and in the said Indenture, the said Earl *Edward* did covenant, to stand seised to the uses contained in the said Indenture. No fine or other assurance was levied or made by the said Earl *Edward*, before the said Trinity term.

Afterwards, (*Viz.*) 17 September next following, the said Earl *Edward*, acknowledged a note of a fine of the said Mannor of *Eckering*, only to *Gilb. Gerard*, and *Thomas Ho*; and the Heirs of *Gilb.* And the 18. day of the said month acknowledged another note of a fine of the said Mannor of *Eckering*, amongst many other Mannors mentioned in the later Indenture to the Lord *Burghley*, Sir *Gilb. Gerard*, and other parties to the later Indenture, and both fines were entered in *Octabis Mich.* after. And it was proved by divers Testimonies that the said Earl *Edward*, as well before the Indentures, as after the Fine levied, said, that the Countess should have the Mannor of *Eckering*. It was resolved, by *Popham* chief Justice, and all the Court.

First, although the Indenture being made for declaring of uses of a subsequent Fine, recovery, or other conveyance, to certain persons; and within certain time, and to certain uses; yet they are only directory, and do not bind the estate or interest of the Land, yet if the Fine, recovery, or other

assurance be pursued according to the Indenture, there cannot be any averment made against the Indenture taken in this Case; that after the making of the Indentures, and before the assurance by mutual agreement of the parties, was concluded and agreed, that the assurance should be to other uses, but if other agreement or limitation of uses, be made by writing or by other matter of as high, or higher, nature, then the latter agreement should stand, for every contract or agreement ought to be dissolved by matter of as high nature as the first was. *Nil tam convenientis est naturali equitati quam unum quodq; dissolvi et colligari quo ligatum est.*

Also it was very inconvenient, that matters arising should be controuled by averment of parties, to be proved by incertain testimony of slippery memory, and should be perillous to purchasers, Farmers, &c.

2. It was resolved, that if the form of the Indentures be not pursued, (as for quantity of Land, the time within which the Fine should be levied, &c.) an averment without writing may be taken, that the Fine, &c. was to other use, than was contained in the Indenture, by reason of a new agreement subsequent which in this case may be as well by word as writing.

3. It was resolved, that although the Indentures be not pursued, in circumstance of time, quantity, person, &c. yet if no other mean new agreement be proved, the Fine, &c. in judgment of law shall be to the use named in the Indenture. The fines cannot be directed by both the Indentures, although perhaps it was in the meaning of the parties, because the directions and declarations of the first Indentures were controuled and frustrated by the said second Indentures.

Cases of Executors.

Russells Case, 26 Eliz. fo. 27. banco regis.

A Release by an Infant Executor under the age of 21 years, is no bar, but upon payment or satisfaction to an Infant Executor, he may acquire and discharge the Debt, for so much as he receiveth the things that he doth according to the Office and duty of an Executor, shall bind him; an Executor may release before probate of Testament, for although he may not have an action, yet the interest of the action is in Law in him at the time of the release.

Middletons Case, 1 Ja. in Com. Banco, fo. 28.

IT was adjudged between Middleton and Rymer that an Executor before probate may release an action, although that before the probate, he may not have action, for the right of the action is in him; if A. release and after takes administration that shall not bar him, for the right of the action, was not in him at the time of the release. Two Executors proved the testament, the third refuseth, yet he may release. *Littlel. 117.* if one be bound to pay a sum of money at a day to come, a release of actions before the day is a bar, and yet before the day he could have no action.

Harrisons Case, 40 Eliz. fo. 28. com. banco.

IT was adjudged, that a judgement upon Debt due by Obligation, shall be paid before a Statute made

made for performance of covenants, which are things in contingency, and in future or other Statutes or recognizances for debt. *Vide Sadlers Case* in the fourth Book, although the judgement be after the acknowledgement of the Statute.

Piggots Case, 40 Eliz. Com. Banco, fo. 29.

ONe bringeth Debt as administrator, *Durante minore etate*, of one whom he averred to be within age, and he doth not say, that he was within the age of 17 years, and the Plaintiff was barred, because at that age the administration ceaseth.

Princes Case, 41, & 42 Eliz. com. banco, fo. 29

AN Infant is made Executor, *Administratione durante minori etate*, may be committed to the Mother or other friend of the Infant, which shall cease and be void, when the Infant is at the age of 17 years, and this administrator may not sell any goods of the Deceast, unless it be for necessity of payment of debts, for he hath his office of administrator, *Pro bono & commodo Infantis*, and not for his prejudice, also he cannot assent to pay legacies, unless there be assents to pay debts, &c. and if it be a woman under the age of 17 years, and take husband at full age, the administration ceaseth.

Where one hath goods solely, in an inferior Diocess, yet the Metropolitan of that Province, pretending that he had *Bona notabilia*, in divers Diocesses, committed the administration, &c. this Administration is not void, but voidable by sentence, because the Metropolitan hath jurisdiction in all places within his province, but if the Ordinary of one Diocess commit the administration of goods, when the party

party hath *Bona notabilia*, in divers Diocess, this administration is meerly void, as well for his goods within the Diocesse as without, *vide Vere & Jeffreys Case*, 22 *Elix.* in *bank le roy*, there cited and so adjudged.

Coulters Case. fo. 30, 40, & 41 Elix. Banco Regis.

AN Executor in his own wrong ought not to retain goods in his own hands to satisfy his own just Debt, for every Creditor by such means while the goods be not sufficient, would strive to make himself Executor, *De son tort*, to satisfy himself, and others, &c. And it is not reasonable that one should take advantage of his own wrong, *Non facies malum ut inde fiat bonum, & melius est omnia mala pati quam malo consentire.* It is also cleer, that all lawfull actions that such an Executor doth, or disseisor, or an abator, &c. are good.

Hargraves Case, 41, and 42 Elix. Banco Regis, fo. 30.

Lessor bringeth Debt against the Administrator of the Lessee for years, for rent due after the Administration committed in the Debt, and is ought to be, because he himself took the profits, and nothing is as yet in his hands, but the profits, before the rent; but in all actions brought by Executors (or Administrators) the writ shall be alwaies in the Detention, although the duty accrew in their own time.

Pettifers Case, 35 Elix. Banco Regis, fo. 32.

UPon a *Fieri Facias de bonis testatoris*, the Sheriff returneth *Nulla bona*, a Writ issueth

The Sheriff to inquire by inquest, if the Executors have wasted, and how much, who returneth that they have, and judgment given against them, *De bonis propriis*, they bring error in redditione Executionis, & the execution was reversed, for the course is upon *Nulla bona*, to have a speciall *Fieri Facias* to make Execution *De bonis propriis*, if they have wasted; and if the Sheriff so doth, where they have not wasted, they have remedy against him: but if he taketh an inquest and returneth it, although it be false, there is no remedy against the Sheriff, or any other.

Robinsons Case, 1 Jac. com. Banco, fo. 32.

Executor brings debt as Administrator, and is barred by plea, that he is Executor, he may bring Debt, as executor, for he was barred, as to the action of Writ, to have debt as Administrator, but not by Action.

Rodes Case, fo. 33. 2 Jac. com. banco.

When a man dieth intestate, and a strange person taketh the goods of the intestate, and useth them, or sells them; this maketh him an Executor of his own wrong, for when none assumeth to be Executor, nor takes Letters of Administration, the using of the goods is sufficient to charge him as Executor, *De son tort*, for those to whom the Decast was indebted unto, have not any other in this case, against whom they may bring their actions, for recovery of their debts. When an Executor is made, and he proveth the Testament, or assumeth upon him, the charge, and doth administer, in this case, if a stranger takes any of the goods, and claimeth them for his own, this doth not make him an Executor.

cutor of his own wrong, because there is not another lawfull Executor.

A lawfull Executor shall not be charged, but with the goods that come to his hands, after that he assumes unto him the charge of the Will, &c. but if another man first takes the goods, &c. before the lawfull Executor hath assumed the execution, & proved the Testament, in this case, he may be charged, as an Executor of his own wrong.

*Construction of the Statutes of Jeofails,
&c. Amendment of Records, Fines,
Recoveries, &c.*

Playters Case, 25, & 26 Eliz. Banco Regis, fo. 30

THE Defendant was found guilty in trespass, *Quare clausum fregit & pisces suos cepit*, and damages assessed intirely; it was moved in arrest of judgment because in the Count, neither the nature nor number of Fishes was shewed. It was answered the Plaintiff, That the Defendant is found guilty to damages, and *Non refert*, of what nature or number they are. 2. That the Fishes themselves are not to be recovered, but damage for them, therefore no need to shew the certainty. 3. All the damages shall be intended to be given for the close broken, which is said in the Declaration. 4. It is matter of form, ayded by the Statute of 18 Eliz. c. 14. But judgement was stayd, for the office of Declarations to reduce the Writ to certainty, & otherwise upon such a generall Issue, if the Jury give a false verdict, they cannot be attainted, and damages shall be intended to be given for all, because

use they are intire, but if they had been severed
 the Plaintiff shall recover for so much as is well plea-
 ed, and this is matter of substance, and not of form,
 cause it is no default of the Clerk, but of the Plain-
 tiff, and therefore not aided by the Statute.

Walcots Case, 30 Eliz. Banco Regis, fo. 36.

Debt was brought against Baron and Feme, in the
Deinet tantum, upon an Obligation by the Feme
 before Mariage; it ought to be in the *Debet*, and
 not in the *Deinet* because the Baron had the goods of the wife
 in his own right, and for that reason debt is brought
 against the Heir in the *Debet*, and this is matter of
 substance, and point of the Action, not remedied by
 Statute of 18. *Eliz. c. 14.*

Baynebams Case, 30. Eliz. in Scaccar. fol. 36.

Ejectione firmæ of Lands in A. B. and C. tryed
 for the Plaintiff by a Visne out of A. only, this
 is sufficient and not remedied by any Statute.

Gardiners Case, 21. Eliz. Banco regis, fo. 37.

Jurors are returned, 12. appear and find
 for the Plaintiff, this is remedied by 18. *Elizabeth,*

Bishops case, 34. Eliz. banco regis, fol. 37.

Discrepancy is between the Writ and count in name,
 the Plaintiff recovers, the Defendant bringeth
 a writ of Error, the Writ was removed into the Kings Bench,
 the judgment was reversed, because the Statute

remedierh where there is no Original, but not where the Original is vicious, and although it were removed after pleading, &c. yet because the fault appeared to the Court, the judgement was reversed.

Tey's Case, 34. Eliz. Banco Regis, fo. 38i

Baron and Feme levy a fine to one who grants renders to them two, and to the Heires of the Baron, and after renders part to the Feme in tail, remainder over, the Heir of the Husband brings Writ of Error, and assigns for error the said variance. 1. Resolved, that there needeth not a new form in render upon a fine, but it shall be in the case construed, as a grant by Charter, for it is a grant of record.

2. There are five parts of a fine.

1. The original.

2. The Licence to accord, for which the King'silver is due, and ought to be entered upon the Writ of Covenant, and the summe, and he who payeth it is, he in whom the fee repositeth, the Plea, and before whom, &c. and the Land ought to be mentioned.

3. The concord which is the substance of the fine, for if upon that, the King's silver be paid, although the party die, the fine is good.

4. The Note, which is many times taken for the Concord.

And lastly the Foot of the Fine, after delivery of the Indentures of the fine, the fine is said to be grossed.

3. The Conusor shall not assign error in the fine, because it is to his advantage, and none shall assign Error, except it be to his disadvantage.

Dormers Case, 35. Eliz. Banco regis, fo. 40.

Common recovery is had in a Writ of Entry, in the *Post de uno annuali redditu sive pensione quatuor vicarum*; and of an advowson, wherupon a Writ of Error is brought. 1. Because every *præcipe* ought to be certain, but here it is in the Disjunctive. 2. A Writ of Entry in the *Post* lyeth not of an advowson; But Judgment was affirmed, and thereby 'twas resolved, That a common recovery is not like to other recoveries, for it may be averred to an use. 2. It is by mutual consent, & *consensus tollit errorem*. 2. A Writ of Entry in the *Post* lyeth of an advowson common, to suffer a common recovery and not otherwise, no other assurance can be had to bar the remain-

The demand of the Rent is good, for one of two things is not demanded, but one thing by two names, rent and pension are *Synonima*, and the rather so, because it is said to issue out of Land, which a pension properly cannot. 3. Common recoveries are usual, that the Court shall take notice that they are common recoveries.

Rowlands Case, 35. Eliz. Banco Regis, fo. 41.

Pannel of a Jury is annexed to the *Venire facias* without return, this is vicious and not remedied 8. *Eliz. cap. 14.* for that remedyeth insufficient returns, but not where no return.

The Countesse of Rutlands Case, 36. Eliz. fol. 42.

Robert Moore is returned upon the *Venire facias*, in the panel before the Justices of Nisi prius, and in the *Postea* he was named Robert Mawre, it appear that Moore is his right name, and that it is who is sworn, it is good, for by the common Law this was a discontinuance against all the Jurors, and discontinuances are aided by the Statute, otherwise if it were mis-named in the *Venire facias*, and had right name in the Panel and *Postea*.

Codwells Case, 36. Eliz. Banco Regis, fol. 42.

A Juror who gave verdict, was misnamed in the *Venire facias*, and had his right name in the *Distress* and *Postea*, and for that the Judgment was awarded.

Nichols case, 38. Eliz. Banco regis. fol. 43.

C. Brings Debt upon a single Bill against N. pleaded payment without acquittance, and was found for the Plaintiff, although issue was made upon a point not material, yet after verdict is aided by 32. H. 8. and 18. Eliz.

Bohuns Case, 39. Eliz. fol. 43.

A Fine was levied of a Mannor and other Lands to the value of twenty Marks per annum, for the Kings silver is 40. s. which was paid, but in entering of it upon the Writ of Covenant, the manor was omitted, and thereupon error was brought after that, the transcript of the fine was removed into the Kings Bench, the Judges of the common

face amended the Record, because it appears to them that the Kings silver was paid for the mannor, and where the Writ of Covenant was, *Dede meipso*, or *Teste meipso*, they amended that also, and certified it into the Kings Bench upon diminution, and allowed.

Freemans Case, fol. 45, 41. Eliz. Banco Regis.

IN an original Writ, &c. *Quod nullus faciat vastum venditionem & districtionem*, where it should be *destructionem*, the fault was onely in one Letter, the court resolved upon good consideration, that it was matter of substance; for *Districtio* is a Latin word, and altereth the sence of the Statute; and matter of substance in an Original Writ is not remedied, but matter of form only, *Vide Statute 32. H. 8. ca. 30. & 31. Eliz. ca. 14.*

If an Original at this day want form, or contain any mistake in Latine, or vary from the Register in matter of form, after verdict no judgment shall be stayed or reversed. But if it want substance, although it be the misprision of the Clerk, this is not remedied by any Statute.

Gages Case, 41. Eliz. banco regis, fo. 45.

A Writ of Covenant to levy a fine, bore date after the return, this is amendable because a common assurance, but in other actions no amendment, &c.

Cooks Case, 41. Eliz. com. banco, fol. 46.

Common recovery of the Mannor of *Isfield*, by the name of *Isfield*, is amendable, because it appeared

peared to the Court, by collateral things, shewed to them that Isfield was intended to passe.

Cases of Pardons.

Francklins Case, 36. Eliz. fol. 46. in the Star-Chamber.

A Bill was exhibited for a Riot in the Star-Chamber five years before the general pardon, *Eliz.* and it was resolved that the Kings fine was accepted, but not the corporal punishment, but were exhibited within four years, all shall be accepted. In this case, the Kings Attorney may proceed for the fine.

Guilbert Littletons Case, 39. Eliz. fol. 47. Star-Chamber.

A Bill exhibited in the Star-Chamber before Parliament 35. *Eliz.* and returned after, this is accepted out of the general pardon, for it is depending before the return, but if an Original Writ eth out of the Chancery, returnable in the same place, this is not depending before the return, but out of another Court, but after the return, it shall be said depending by relation, from the day of *Teste*: and if the Tenant alien before the return after the *Teste*, this shall be said an alienation, per the Writ.

Drywoods Case, 42. Eliz. Star-Chamber, fo. 48.

A Bill in the Star-Chamber more than eight years, and within eight years, before the Parliament

ment In 39. *Elix.* the plaintiff dyeth before the general pardon, this is pardoned, for this doth not depend now, and the words remaining to be prosecuted, shall be intended for the party, and not for the Kings Attorney.

Vaughans Case, 40. Eli. Banco regis, fol. 49.

A Writ of entry in the *Quibus*, depends in *wales*, before the general Pardon, and after the Defendant had judgment, but the Tenant was not amerced. 1. Resolved, the Amercement is pardoned because the *Torte* was pardoned, which together with the delay was the ground thereof. 2. The Statutes of *Testailes* extend to *wales*, because it was made parcel of England, by the Act of 27. H. 8.

Wyrrells Case, 41. Eli. In the Exchequer, fol. 49.

THE Queen brings debt upon an Obligation made by the defendant, to one who was Outlawed, the Defendant pleads the general Pardon, and although that debts due to the Queen are excepted, yet debts originally due to the Subject, and after came to the Queen, are not excepted, also the general pardon is to be taken beneficially, for the subject, and most strong against the King.

Biggins Case, 41. Eli. Banco regis, fol. 50.

THE King may Pardon burning in the hand, where the defendant is found guilty of Man-slaughter, and hath his Clergy in an appeal. 1. Because it is but to notify to the Judges, that he hath once had his Clergy, and that he shall not have it again, by the Statute of 4. H. 7. c. 13. 2. Because it is

no part of the judgment, and the party shall goe at large, although he be not burned by good confession of the Statute of 18. *Eliz. c. 7* which provides that after Clergy allowed and Burning, he shall goe at large, for otherwise when he is pardoned, he shall be imprisoned for ever. In the Star-Chamber the King may pardon corporal punishment for forgery &c. but not if attainted at the common Law in Action of forgery of false deeds.

Halls Case, 2. Jacobi, com. banco, fol. 51.

A C. Libelled, for defamation in the Court Christian against H. and had sentence and costs adjudged at a day to be paid; A. sueth an appeal, and obtains a pardon from the King, and brings a prohibition. 1. Resolved, all Sutes in the Court Christian *Pro salute animæ*, or *reformatione morum*, are for the Kings as Suits in the Star-Chamber, and he may pardon them before or after the Sute commenced, but cannot pardon, where the party sueth for a thing in which he had interest, as Tythes. 2. All proceedings in the Court Christian *Ex officio*, are for the King, and he may pardon them. 3. Although the party may be pardoned, yet he cannot pardon the costs which are taxed. 4. Although the sentence by the appeal is suspended to many purposes, yet until reversal, the party had interest in the costs, nor pardonable, and after a consultation was granted for the costs.

Pages Case, 30. Eliz. in the Exchequer, fol. 52.

I Demiseth to his wife who is an Alien, and becometh the death of the Testator indenized, the date of the Letters Patents is corrupted, so that they

are after his death, she obtains an exemplification, by commission under the Exchequer Seal, it is found that she was an alien, and an information is brought against her, and she pleads the exemplification. 1. Resol. This office is void, for every office intitling, as this is, ought to be by commission under the great Seal; but an office of instruction may be under the Exchequer Seal. 2. It appeared not, what authority the commissioners had, but *Inquisitio capta virtute Cujusdam Commissionis*, &c. 2. That the exemplification was pleadable by the Statute of 3. Eliz. c. 6, which extends to all Patents whatsoever without any restraint: An Exemplification and an *Inspeimus*, as an *Innotescimus* and a *Vidimus* are all one: A Constat cannot be had without Affidavit, and it is when Letters are casually lost; An *Innotescimus*, or a *Vidimus*, are alwayes of a Charter of Feoffment, or other Instrument, not of Record.

Knights Case, 31. Eliz. Communi Banco, fol. 54.

The Prior of St. John of Je. 26. H. 8. Leased divers houses, reserving 5. li 10. s. 11. d. per annum at the four usual feasts in L. viz. for one house 3. li. 11. d. and severally of the others, with condition of re-entry for non payment, and after surrenders to H 8. who in anno 36. grants one house to the Lessee, and another to the Lessee, the Lessee dyeth; It is found by Inquisition the Com^r. of Mid^s. by Commission under the Exchequer Seal, that 37. s. 5. d. parcel of the said rent was arrear at M. for a quarter of a year, before the return of the office or seizure, the King grants the residue of the houses to one who leaseth to the Plaintiff, who upon entry of the Executors of the first lessee brings trespass, and the Court being divided, it was argued in the Exchequer Chamber by all the Judges,

1. Re-

1. Resol. This is an intire Lease, and the viz but a declaration of the severall values of the house and no severance of the reservation, but by apt words divers parcels may be severally leased by one lease, and severall rents reserved. 2. Admitting severall rents, yet the condition is intire, and in case of a common person by severance of any part of reversion, will be extinct. 3. This being in case the King his patentee of part shall not take advantage of the condition, but the King himself may and the patentee to whom he grants the residue, though the Lease originally made by a Subject, though it be found that more was arrear than reserved quarterly, yet it sufficeth that the office is a matter of substance, and the jury in M. may find which are the usual feasts in L. 5. the grant after sixe and before the return of it is good, and by deed without other seisure the Lease is void. 6. This under the Exchequer Seal is sufficient to intitle the King to a Chattel.

Specots case. 32. Eliz. Banco Regis in Error. fol. 10.

S & sa feme bring a Qu. impedit against the Shop of E. and declare that J. A. was seised of a Mannor, to which an advowson was appendant, and demised it to the feme for life, and they presented D. W. who dyed, and so it belongs to them to present; the defendant pleads that the plaintiff presented one who is *schismaticus inveteratus*, whereupon gave notice to the plaintiff; It was adjudged for the plaintiff, in the common place, an Error brought thereupon.

1. Error. Because no presentment alleged against A, but over-ruled for the presentment of the plaintiff, is sufficient for themselves. 2. The

ought not to shew any particular schism, for the Court of the King cannot Judge of it, but the bishop judge: also it is cause to remove a Coroner, *quia non idoneus*: It was answered that he ought to shew the heresie in certain, and although the Bishop is Judge, yet because his Act is not of Record, it is traversable, and although it belongs not to the Kings Court to judge of Heresies, yet the general cause of the being in their consufance, they shall determine it by advise of Divines, and the cause of removing a Coroner is not traversable. 3. The bishop is twice amerced, and a man can be amerced but once towards one man, &c. It was answered, that he was at once amerced; for the Judgment in the Kings Bench was but a rehearsal of the former, yet admitting the second Judgment thereby void; nevertheless the first Judgment is good by the common Law without damages, *Quod fuit concessum per totam Curiam*.

Fostar. 32. El. in Banco le roy. fo. 59.

It was resolved that the Constable having a warrant to bring one *coram aliquo Justiciar*. &c, it is at the election of the officer to bring the party so attached to what Justice he will; For it is greater reason to give the election to the Officer, who (in pre-emption of Law) is a person indifferent, and sworn to execute his office duly, than to the delinquent. My cheif Justice said, that a Justice of Peace may take his warrant to bring the party before himself, and it is good and sufficient in Law; for it is most like, that he hath the best knowledge of the matter, and therefore most fit to doe Justice in that matter: upon refusal to find surety, the Constable may commit him without a new warrant.

Gooches

Gooches Case. 32.El. in Banco le roy, fol. 60.

WRay chief Justice said, that if A. make a fraudulent conveyance of his Lands to deceive a purchaser, against the Statute of 27. *El.* and continue in possession, and is reputed as owner; B. enters in communication with A. for the purchase, and by accident B. hath notice of this fraudulent conveyance; Notwithstanding he concludes with A. and takes his assurance. In this case B. shall avoyd the said fraudulent conveyance by the said Act, notwithstanding the notice; for the Act by expresse words hath made the fraudulent conveyance voyd as to the purchaser. And for as much as that is within the expresse provision of the Statute, it ought to be taken and expounded in suppression of fraud, Resolved, that fraud may be given in evidence, because the estate is voyd by the Act of 13. *Eliz.* and fraud is hatched in secret, *in arbore cava & opaca.*

And according to this opinion, it was resolved *Per tot' cur' in communi banco Pasch. 3. Jac.* where *Bullock* had made a fraudulent estate of his Lands within the Statute of 27 *Eliz.* to A. B. and C. and after offered to sell the same to one *Standen*, and before the assurance by *Bullock*, *Standen* had notice thereof, and notwithstanding proceeded, and took the assurance from *Bullock*, *Standen* avoyed the former assurance of fraud by the said act, for the notice of the purchaser cannot make that good, which an Act of Parliament hath made void as to him, And it is resolved *Quod non decipitur qui scit se decipi.* But in this case the purchaser is not deceived; for the fraudulent conveyance whereof he had notice is made void, as to him, by the Statute, and therefore he knew it could not hurt him.

Sparries case, 33. Eliz. in Scaccar. fol. 61.

An action of Trover and conversion, the defendant pleads that there is another action depending in Kings Bench for the same Trover, and good; in actions which comprehend no certainty, as assault or trespass, this is no plea before a Count; because thereby it is made certain, and then it is a good plea, and not before; but in this action and debt and detinue, it is a good plea at the first, because they are certain: that an action is depending in an inferior Court is no plea.

Cases of By-Laws.

*Chamberlain de Londons Case, 32. El. in banco
le roy, fol. 66.*

The Inhabitants of a village without any custome, may make Ordinances or By-Laws for reparation of the Church, or of high-ways, or any such thing which is for the publique weal generally; and in this case the consent of the greater part shall bind without any custome, *vide* 44. E. 3. 19. But if it be for their own private profit for that Town, as for their well ordering of their common of pasture, such like, then without custome they cannot make By-Laws. And if it be a custome, yet, the greater part shall not bind all, if it be not warranted by the custome; for as custome hath created them, so they ought to be warranted by the custome, 8. E. 2. tit. ass. of pontage, murage, toll, and such like, as appeareth 13. H. 4. 14. In which cases the summes for reparations of the Bridgewalls, &c. ought to be reasonable, that the Subject may have more benefit thereby than charge.

Clerks

Clerks Case, 38 Eliz. in communi Banco, fol. 64.

King Edward 6. did incorporate the Town of *Albones*, and granted them to make Laws and Ordinances, &c. The Term was kept there, and Mayor, &c. by assent of the Plaintiff, assessed every Inhabitant for the charges in erecting of the Court there, and if any did refuse to pay, &c. to be imprisoned, &c. the Plaintiff being Burges refused to pay, &c. and the Mayor justified, &c. and it was adjudged no plea, &c. For this Ordinance is against *Magna Charta, ca. 29. Nullus Liber homo imprisonetur*, which act has been confirmed divers times (*viz*) thirty times, and the assent of the Plaintiff cannot alter the Law in this case. But it was resolved, that the Mayor, &c. might inflict reasonable penalty, but not imprisonment, which penalty ought to be levied by distress; for which offence an action of Debt lyeth, and the Plaintiff in this case had judgment.

Jeffrays case, Michaelis 31, 32. en Bank le Roy, fo. 66.

William Jeffray Gent. brought a prohibition against *Abraham Kenshley*, and *Thomas Fyfe* Churchwardens of *Haylsham* in *Com. Suffex*, for that they sued him in Court Christian before Doctor *Derry* for certain money imposed upon him without assent, for repair of the Church, That the Churchwardens, with the assent of the greatest part of the Parishioners *juxta quantitatem & qualitatem possessionum & reddit. infra dict. parochiam existent.* Determined and agreed to make a taxation for repairing the said Church, and that notice of such assent was given in the Church, at which day the Churchwardens and greater part of the Parish, which was

ere assembled, made a taxation (*viz.*) every occupier of Land for every acre 4. d. &c. *Jeffray* dwelt in another Parish, and declared that the Parishioners of every Parish ought to repair their Church, and not the Church of another Parish. *Cook* of counsell for the defendant demurred in Law, and after many arguments a Writ of consultation was granted. and it was resolved, That the Court Christian hath *onusans de reparatione corporis sive navis Ecclesie*: who writ in 5.E.1.

And in the Statute of *Circumspecte agatis*, but in *abus manifestis errat qui auctoritates legum allegat, quia specie vera non sunt probanda*. It was also resolved, that although *Geffray* did dwell in another Parish, yet that he had lands in the said Parish, in his proper possession, he is in the Law *Parochianus de Haylesham*. But it was resolved, that where there was a Farmor of the same Lands, the Lessor that receiveth the rent shall not be charged, but the Inhabitant is the Parishioner, and the receipt of the rent doth not make the Lessor a Parishioner.

Divers of the Civil Lawyers certified the Court, that the Church-wardens, and a greater part of the Parishioners (upon a general warning) assembled, may make a Taxation by their Law, and the same shall not charge the Land, but the Person in respect of the Lands for equality and indifferency, and this was the first leading case that was adjudged and recorded in our Books touching these matters, and many causes after were adjudged thus, and now it is generally received for Law.

*The Lord Cheneys Case, 33. Eliz. in cur. wardo.
fol. 68.*

IN a devise of Lands by writing, an averment out of the will, shall not be received, for a Will concerning Lands, &c. ought to be in writing, and not by an averment out of the same; otherwise it were great inconvenience that not any may know by the written words of the Will, what construction to make, it might be controuled by collateral averment out of the Will.

Cases of Usury.

Burtons case, 34 Eliz. banco regis, fo. 69.

A Lends to T. W. 100. l. 7. July 21. Eliz. in consideration of which, T. W. grants to him a charge of 20. l. per annum, the first payment to be at the Nativity, 1580. upon condition of payment of the said 100. l. this is out of the Statute of Usury, for he had a 100. l. for a year and a quarter, without consideration, and if he pay it within this time, A. shall not have the rent, so that he was not assured of any consideration: But if it were agreed between them that the 100. l. shall not be paid, this is within the meaning of the Statute. A Demurrer is a confession of all such matters in fact onely, as are well and sufficiently pleaded.

Claytons Case, 37. Eliz. Com. Banco, fo. 70.

THirty pound was lent for half a year to have for it thirty-three pound; if the sonne of the obligor

ligee be then in life, if not 27 pound, this is within
 the intent of the Statute of Usury: *usura dicitur ab
 & are, quasi usuera, (1.) usus æris? Et usura est
 modum certum, quod propter usum rei mutata reci-*
 : Glandvile, lib. 7. cap. 16.

Hoes Case, 34. Eliz. fol. 70.

Duty certain upon a condition subsequent may
 be released, before the day of the performance
 the condition; but a duty uncertain at the first,
 upon condition precedent to be made certain,
 er, this in the mean time is but onely a meer
 sibility, and therefore cannot be released. And it
 is adjudged 4. El. in *communi banco*, that by a release
 all actions, sutes, and quarrels, a covenant before
 each of it is not released thereby. But by a re-
 lease of Covenants, the covenantor is discharged be-
 fore the breach, *vide Litt. 170.*

A release in the time of vacation to the Patron
 chargeth an annuity, wherewith the Parson is
 charged in respect of the parsonage, and a warranty
 may be released before sute, because he may have a
warrantia chartæ.

St. Johns Case, Eliz. Banco Regis, fol. 71.

Aggs, Pistolls, &c. are within the Statute of 33.
 H. 8. ca. 6. the same Statute doth prohibite
 offe-bows, and under the same name stone-bowes
 forbidden; for if a small alteration or addition
 could defeat the penalty of the Act, the Statute
 could be of small effect. And it was resolved, that
 the Sheriff, or any of his Officers, for the better exe-
 cution of Justice, may carry handguns or other wea-
 ns invasive or defensive, and not restrained by the
 P gene-

General prohibition of the said act, *vide* 3 H. 7. p.

Williams Case, 37 Eliz. Banco Regis, fol. 72.

One man shall not have an action of the Case for common Nuisances made in the high way, because it is a common Nuisance, and it is not reason, that a particular person should have an action, for then every particular person might have an Action for the same, and so thereby one might be punished an hundred times for one cause. But if any particular person have more particular damage than another, he may have a particular action upon the Case for his particular injury; and for common Nuisances, which are equal to all the Kings people, the common Law hath appointed other Courts (*viz*) Leets, &c. for prescription to do Divine Service in a Chapel; the Lord and his Tenants is remediable only in Court Christian; but for the Lord and his private family, an action of the Case lyeth for the Lord or

Case of Orphans of London, 35 Eli. Banco Regis, fol.

IF any Orphan of London sue for goods, &c. in Court Christian, or of Requests, a prohibition lyeth because their government by their custome belongs to the Maier of L. So if a Will be proved in the Court Christian, the probate whereof belongeth to the Lord of Mannor.

Wymarks Case, 36 Eliz. Banco Regis, fol. 74.

Plaintiff in an *Ejectione firme*, counts of a Lease R. S. the defendant pleads in Barre as in the nature of bargain and sale (and sheweth it) by the R. S. to E. W. who was seised untill disseised by

who leased to the Plaintiff, and he as servant to E. Winters; Three Terms after the Plaintiff, replies, that the bargain and sale was upon condition, which was broken, and the bargainor entred and leased to him, and did not shew forth the deed of bargain and sale: Judgment given for the defendant.

1. Resol. When a deed is shewed to the Court, it remaineth in the Court all the Term in Judgment of Law, because the Term is but one day in Law, and this as well to strangers at parties, to take advantage thereof without shewing, but at the end of the Term it shall be delivered to the party, if it be not denied, for then it shall remain in Court to be examined, if it be found not his Deed.

2. The Course in the Kings Bench is, that impleadments to plead in barre are entred, but not impleadments to reply or rejoin, so that the Replication here, though it be three Terms after the Barre, yet it shall be intended here the same Term, and so he shall not need to shew the Deed.

Cliftons Case, 35. Eliz. fol. 75.

A woman Tenant for life take a husband which committeth waste, and after the wife dyeth, the husband is dispunishable of and for such waste; for the writ is *Quare de communi consilio, &c. provijum sit quod non liceat alicui vastam venditionem seu destructionem facere de terris, &c. sibi demissis ad terminum vite et annorum &c.* And in this case the Husband hath any estate for life in this land; but the wife hath estate for life, and the husband but only an estate in right, and so he is not within the Act.

Pilkingtons Case, 43. Eliz. en Banco le Roy, fol. 76.

IT was resolved, *Per tot' Cur.* that when a distresse taken for damage fasant, that the party may tender amends until the beasts be impounded; but as they be in the pound, they are in the custody of Law, and then the tender commeth too late. It was also resolved, that tender of amends to the Bay or servant that taketh them, will not serve; for he cannot deliver the distresse once taken, no more than change the avoury of his Master, or demand rent upon a condition of reentry.

The Earl of Pembrooks Case, 36. El. Banco Regis, fol.

VHere the defendant sheweth a deed to Court the Plaintiff may pray it to be entered *in hac verba*, the same term, but not after.

Pagett's case, 35. El. in Communi Banco, fol. 76.

IT was resolved, that if Tenant for life, the remainder for life, the remainder in fee, if tenant for life maketh waste in trees, and after he in remainder for life dye, an action of waste, is maintainable, for the waste done in the life of him in remainder for life, because it was to the disinheretance of him in remainder in fee. And now the impediment (which was the mean estate for life) is taken away. *Et remota impedimento emergit actio*; It was resolved, that when the trees are cut down, the property thereof belongeth to him in remainder in fee. And where it is in some Books, That he in remainder or remainder in fee, shall not have an action of waste, it is to be understood, during the continuance of the mean remainder.

er. And in other Books is said in this case, that an action of waste doth lye, it is intended after the death of him in remainder for life.

Booths Case, 36. Eliz. in Communi Banco, fol. 77.

George Booth brought an Action of waste against Skevington, and declared that Sir William Booth demised for years to Ensor, who assigned to Skevington. The Defendant pleaded an assignment to Elizabeth Cave, before which assignment no waste was made; the Plaintiff replied, and shewed the Statute 11. H. 6. ca. 5. and that the grant to Elizabeth Cave was made to the intent he should not know against whom to bring his action, and averred, that Skevington did take the profits; the defendant rejoined that Elizabeth Cave granted her estate to A. who demised to the defendant at will, and traversed the fraud, &c. the plaintiff demurred, it was resolved, that every assignee of every Lessee mediately or immediately is within the said act, for the Statute was made to suppress fraud, and deceit, and therefore it should be taken most beneficially. Secondly, that he in remainder is within the said act, as well as he in reversion. Thirdly, The intent of fraud aforesaid, is not traversable, but the taking of the profits, which is a thing notorious, wherof the Country may have knowledge. In a formedon the Tenant pleaded, *Non tenuit*, the demandant said, that he made a feoffment to persons unknown, to defraud him of his tenancy, and to keep the profits, the pertinancy of the profits, and not the Feoffment is traversable.

Samons Case, 36. Eliz. Banco Regis, fol. 77.

THe Plaintiff and Defendant referred all controversies to the Arbitrement of I. S. who did Arbitrate that the Defendant shall enter into an obligation to the Plaintiff, that the Plaintiff and his wife shall enjoy certain Lands which he had not done; this is void, for the incertainty of what summe the obligation shall be, for the award ought to be certain like a Judgement: Also the award was void as to the feme, for she was a stranger to the submission.

Graves Case, 37. Eliz. Banco Regis, fol. 78. Replevin

THe Plaintiff intitles himself in Barre to the viewry to Common, &c. which was traversed, the Jury found that every, &c. time of mind have used to pay for the common a hen and five egges; the Plaintiff had Judgment, for he needs not shew more than makes for him, for this is not *Modus communie*, paying so much, nor parcel of the issue, but a collateral recompence to be paid for the common, to which the Terretenant had remedy, but if the Terretenant had no remedy, then the Commoner shall have the Common *Sub modo*, and may be disturbed by the Terretenant.

Fitz-Herbets Case, 37. Eliz. Banco Regis, fol. 97.

THe Father Tenant for life, the remainder to the Son in tail, leaseth for years to A. to the intent to barre the son. A. infeffeth I. S. to whom the Father releaseth with warranty, and dyeth, this doth not barre the Son, for although that the disfeisin which is made by the seoffment, precedes the warrant.

warranty, yet because it was to that intent, the Law will adjudge upon the intire act, and so a warranty by disseisin. 2. Although the disseisin was made to the father, yet because he consented unto it, the warranty commenceth by disseisin; but if the Father had made a feoffment in fee and dyed, this shall bind the son, if it be with warranty.

Foords Case, 37. Eliz. com. Banco, fol. 81.

A Prebend leaseth for 70. An. Parron Deane and Chapter confirm *dimissionem predictam in forma dicta facta* for 51 years & non ultra; this is a confirmation for all the Term; for when they confirm *dimissionem*, &c. for 51 years, it is repugnant, but if they had recited the Lease, and confirmed the Land for 51 years, this had been good; for they have an authority, coupled with an interest, otherwise it only bare authority: but by what words soever they confirm a lease for life, or gift in tail for part, this is a confirmation of all, because they are intire; so if the share of the disseisor, or his Lessee for life, be confirmed for an hour, yet all is confirmed.

Cases of Customes

Snellings Case, 37. Eliz. Com. Banco, fol. 82.

Brings debt upon an obligation against an Administrator, who pleads there is a custome in L. that an Administrator shall pay debts upon contract to a Citizen, as well as upon obligation, and that I. upon a contract had recovered; and good. 1. Resol. Although that debt is given against an Administrator by the statute of 31. E. 3. yet because they
P 4 were

were charged as Executors before, so that only name is changed, the custom generally alledged good. 2. The ordinary by taking the goods, chargeable at the common Law. 3. This custom bindeth strangers.

The Case of Market-overt, 38. Eliz. fol. 83.

SHops in L. are Markets overt for things to be sold here by the trade of the owner, therefore if plate sold there in a Scriveners shop, the property is altered; otherwise in a Gold-Smiths shop, if he passeth in the Street may see it. *Nota*, the reason this case extends to all Markets overt in England.

Perimans Case, 41. Eliz. Com. Banco, fol. 84.

IT is a good custome of a Mannor that all sales of Lands within that Mannor be presented at the Court of the Mannor. *Obj.* What remedy if the Sheriff will not except the presentment? *Resp.* What remedy if the Clerk will not inrolle a deed of bargain and sale, and therefore *Caveat Emptor.* 2. *Obj.* That Interest is by the feoffment vested in the office, which shall not be divested by the Custom. *Resp.* That livery was ordained to give notice, and Custome which addeth more solemnity, and notice good.

Sir Henry Knivets Case, 38. Eliz. Banco Regis, fol.

Tenant for life, the remainder in fee, leaseeth for years, the Termor is ousted, the disseisor leaseeth for years, his Lessee sows the land, tenant for life dyes, he in the remainder enters, I. S. takes

Corn, he in remainder brings trespass. The right of the Corn is not in the Plaintiff or Defendant, but in the Lessee for years or Lessee for Life, but the Lessee of the disseisor had right against the Plaintiff by reason of the possession; and for that if he had pleaded that he had entered to take the Corn, this had been good, but because he pleaded *Non culp.* the Plaintiff had judgement for the Entry, and was barred for the residue.

Pentins Case, 38. Eliz. Banco Regis, fol. 85.

VV. P. Brings a *Quod ei deforceat* in nature of a Writ of Right in *wales*, and after the issue joined is nonsure, Judgment final is given, he brings the like Writ, and the first Judgment is pleaded in bar, the demandant demurres, and adjudged against him, and he brings Error. 1. Although by the Statute of 12. E. 1. Trial of Right in *wales* shall be by Common Jury, yet Judgment final shall be given. 2. Erroneous Judgement final in right shall bind until it be reversed. 3. Judgement final shall not be given upon default of the Tenant in a Writ, but a *Petit cape* shall issue, for peradventure he may save his default.

Cases of Executions.

Blumfields Case, in banco le roy, 39. Eliz. fo. 86.

Two men were bound jointly and severally in an Obligation, the own was sued, condemned, and taken in Execution, and after, the other was sued, condemned, and taken in Execution, and after the first escaped, and the other brought an *Audita quere-*
la

la; and although the Plaintiff might have his Action against the Sheriff upon the escape, yet until he is satisfied indeed, the other cannot have his *Audita querela*, for if the defendant be sued by one Writ several proces, although the entry be, *Quod non fiat executio*. This is to be understood, of one execution with satisfaction, for he may have three bodies in Execution. *In communi banco inter Lynacre & Roden case, Hil. 33. El.* It was adjudged, that notwithstanding the Conusor in a Statute Staple was taken and escaped, yet his goods and lands upon the same Statute, may be extended, for the escape, and the action which the Plaintiff might have against the Sheriff, not a satisfaction of the debt. And if so the Conusor be taken and dye in execution, the Conusee shall have execution of his goods and lands. And it was adjudged, *24. E. int. Joanes & Williams*, that where two men were condemned in a debt, and the one taken and dyed in execution, yet the taking of the other was lawful, and then it was resolved, *Per. tot. Cur.* that if a defendant dye in execution, yet the Plaintiff may have a new execution by *Elegit*, or *Fieri facias*, &c. The Execution of the body is an execution, but not a satisfaction, as appeareth in *4. H. 7, 8. and 32. H. 47.* In *Hillaries Case* adjudged, but a gage for the Debt, for the words of the Writ are, *Capias l. s. quod habeas corpus ejus coram Justic. nostris, &c. ad satisfaciendum G. L. de debito & damnis, &c.* and so the body is taken to the intent he should satisfy, and when the Defendant hath paid the money, he shall be discharged out of Prison.

Garnons Case, 40 E. fo. 88.

LAyton recovered against walwyn, in an Action of Debt, and Out-lawed the defendant after judgement.

ent, and sued a *Cap. Vilag.* and delivered the same
 Garnon the Sheriff, who did take the Party, and
 fore the return of the Writ, the Defendant elca-
 ed: and thus it was Resolved, that if any one at the
 common Law have Judgment in an Action of Debt,
 and after Judgment Out-law the Defendant, then
 the Plaintiff is at the end of the Suit, for any pro-
 ce to be sued in his name, yet if the Defendant be
 taken by *utlary*, at the Sute of the King, no *Laches*
 ing in the Plaintiff, in continuance of his Process,
 he shall be in Execution for the Plaintiff, if he will,
 or reason requireth, that if the King shall have be-
 fit by the Sute of the party, So the Plaintiff shall
 ye benefit by the Sute of the King; if judgement
 error be affirmed with in the year, a *Capias* or
vi facias lyeth without any *Scire facias*, although
 another Court.

Frost's Case, in communi banco, 41. Eliz. 10. 89.

Frost recovertd Debt and damages against B. who
 was Out-lawed after judgment, and a *Cap. utla-*
um delivered to the Sheriff of London. Laborne
 Serjeant arrested the said B. in Fleet street, *Ad re-*
ndendum, A. Laborne kept B. in his House, and then
 came to Laborne with the Sheriff's Warrant, to
 rest B. upon the said *Cap. utlagatum*, the which to
 e, Laborne refused, and afterwards the Sheriff
 ered the said B. to goe at large, and upon this
 ater, Frost brought his Action upon the case a-
 inst the Sheriff, and supposed that the Sheriff
 Arrest the said B. by vertue of the said *Cap. utla-*
um, and that he suffered him to goe at large, and
 Defendant pleaded, *Non permittit eum ire ad lar-*
 The Jury found all the said special matter,
 judgment was given for the Plaintiff, For,
 first

first it was resolved, That when a man is in custody of the Sheriff by Proccesse of the Law, and after another Writ is delivered unto him to apprehend the body of him who is in his custody, immediately he is in his custody by force of the second Writ, by judgment of Law, although he make no actual arrest of him, for to what purpose should he Arrest the party that is already in his custody? *Et Lex non preiudicat inuicta quia inutilis labor stultus*; and the words of the Writ are not only *capias* &c. but also *Saluo custodias*, &c. *Ita quod habeas corpus coram*, &c. and he ought safely to keep him, *vide 7. H. 4. 39.* And the Defendant ought not to be discharged, until he had found surety to satisfy the Plaintiff by 5. *cap. 12.*

Hoes case, 40 Eliz. fol. 89. In the Exchequer.

EXecution of a Writ of Execution, as well at the Suit of a common person, as at the Kings Suit, is good without return of the Writ, for if a man is Arrested upon a *cap. ad satisfaciendum*, the Execution is good although the Sheriff do not return the Writ, and so in all Writs of Execution, where the Sheriff doth only execute the same, as *cap. ad satisfaciendum*, *habere fac seisinam vel possessionem*, *Fieri facias Liberat*. If the execution be duly made, it is good, but if *cap.* in Process be not returned, the rest is not lawful, for there the intent of the Writ is to bring the party to answer the Plaintiff, and in case of an *Elegit*, for there the extent is to be made by Inquest, and not by the Sheriff only; and the Writ ought to be returned, otherwise it is of no effect. In this case it was resolved, that when a man hath a power of revocation, yet if he suffer any thing to be lawfully executed, as touching that, he cannot

make any revocation : as if a man make a Letter of Attourney to another, to doe any thing, before Execution he may revoke it, but after Execution Lawfully done it cannot be revoked ; if one to whom another is indebted, be Outlawed, and he that oweth the mony, payeth it to the King, and the Outlary is after reversed, yet the Creditor shall recover his Debt against the party, if the goods of an Out-lawed person be sold by the Sheriff upon a *cap. Vtalgat* and after the Outlary is reversed by Error, the Defendant shall have restitution of his goods, for the Sheriff or Escheator, is not compellable to sell the goods, but he may keep them, to the use of the King, agreeing to the Book. 20. *Eliz. Dyer.* 363. but if a Sheriff by vertue of a *Fieri Facias*, sell the goods, and after the judgment be reversed by error, the Defendant shall not have restitution of the goods, but the value of them, for which they were sold. And the reason is, the Sheriff is compellable to Levie the Debt of the goods of the Defendant, and therefore great reason that the Sale should stand.

Semaynes Case, 2. Jac. fo. 91. Banco regis.

THAT the House of every man is to him as his Castle, and Fortrefs, as well for his defence against injuries and violence, as for his repose ; that if a man kill another in his defence or per-misfortune, without any intent, yet, it is felony, and he should lose his goods and Chattells, for the great regard that the Law hath to the life of a man. But if Theeves come to the House of a man to rob or murder, and the owner or his servants kill any of the Theeves, in defence of him or his House, this is not felony, neither shall he lose any thing; any man man
may

may assemble his Neighbours or friends to guard his House against violence ; but he may not affect them to goe with him to the Market or abroad , safe-guard him against violence , and the reason of this is, *Domus sua cuiq; est tutissimum refugium*. he is resolved , that when any house is recovered by a real action , or by *Ejectione firme* , the Sheriff may break the house , and deliver seisin or possession. It was also resolved, that in all cases where the King's Parry , the Sheriff may break the House (if the Doores be shut) and make Execution of his Writ but before he break the House , he ought to signify the cause of his coming , and make request to the Doores opened , *uest. 1 Cap. 17*, which is but an affirmance of the Common Law, but if the Officer break the house when he might have the Doores opened , he is a Trespassor, *41. Aff. pl.* For felony, or suspicion of Felony , the Officer may break open the Door ; in all cases where the Door is open, the Sheriff may enter , and make Execution of his writ either for body or goods , at the surety of a subject, or the Lord may distrain for his rent. But it was Resolved , that the Sheriff at the surety of a common person (upon request made to open the Door and denial thereof) ought not to break open the Door or the house , to Execute any process at the Surety of any Subject, or to execute a *fieri facias* , by giving a writ of Execution , but he is a Trespassor , if he doe Execution in the House , it is good in the Law, being done, it was also Resolved, that the house of a man is not a Castle or defence for any other person but for the owner, his Family and goods , and not to protect another that flyeth into the same, or the goods of another, for then the Sheriff upon request and denial , may break the House . and make Execution. And this is proved by the Statute

§. 1. ca. 17. whereby it is declared, that the Sheriff may break the House or the Castle to make replevin, when the goods of another that he hath distrained, are conveyed away, to prevent the owner; for in this case the Sheriff must demand the goods.

Barwicks Case, 39. Eliz. in Exchequer, fol. 93.

The Queen 28. Die Julii, Anno 26. demised the mannor of Sutton, to Humfrey Barwick, tenend. sibi die consuetudinis. It was resolved, that the same 28. day of July, is excluded, and the demise began the 9. of July. It was also Resolved, that an estate of Freehold cannot commence *In fut uro*, but ought to take effect presently in Possession, Reversion, or Remainder. A Lease for years may commence in future, but not a Lease for life, and the reason is, for that a Lease for years may be made without livery and seisin, but an estate of Freehold may not be made without livery, either in Deed or in Law, and therefore when a man maketh a Lease for Life, to commence at a day to come, he cannot make a present Livery to a future estate; and therefore in this case nothing passeth, and it is all one whether it commenceth at a day to come, or years to come, for the distance of the times doth not make alteration in this case, but in the case of two joynt Lessees, the livery made to one is good in the name of both, for they have interest in the Land, before their entry, and livery to one in the name of both, maketh an actual possession in both, which is sufficient to support the remainder to a third person in Fee. *Vide Clayton's Case*, in the Fifth Book, a License to occupy Land for one yeare, is a Lease for one year. §. 7. 1. in consideration of a former demise to be

be surrendered, which was false and void, is a consideration, as to the Queen.

Goodalls Case, 40. El. Banco Regis, fo. 95.

Conditions for payment of money touching inheritance, ought to be truly performed, and covenous, if they concern a third person. The Law doth not find an assignee in Law where there is an assignee in fact. *Expressum facit cessare tacitum*; affirmed in the Exchequer-chamber upon Error there brought.

Countesse of Nothumberlands case, 40 El. Communi Banco, fol. 97.

Fitzion and the Countesse of Nothumberland his wife Sir Thomas Cicil Knight, and Dorothe his wife William Cornwalleys, and Lucy his wife, and the Lady Davers, Daughters and Heirs of the Lord Latimer brought a (*Quare impedit*) against Hall, who pleaded a release of William Cornwalleys, pendente breve, and it was adjudged that this should but goe in Barre only against William Cornwalleys and his wife, and the Writ should stand for others, and all shall recover in the others, because intire, and in the realty, by assentment of the Lessor and Lessee is not double, but the Lessor's only traversable.

Buries Case, 40. El. in Communi Banco, fo. 98.

Between VVhebfster and Burie in Ejectione firmæ, special verdict was given upon divorce between Burie and his wife, *causa frigiditatis*, and that his wife was for three year, after the marriage, *Remansit virgo intacta propter perpetuam impotentiam generationis* in

& quod vir fuit ineptus ad generandum; and in this special verdict, all the examinations of the Witnesses, upon which the Judge in the spiritual Court was moved to give his sentence, by which the perpetual inability of Bury ad generandum was manifest, were read; and by which it was pretended, that the issue which he had by a second wife was illegitimate, and this was the doubt of the Jury, and it was adjudged, that the issue of the second wife was Lawful, for it is clear that by the divorce (*causa frigiditatis*) the marriage is dissolved *a vinculo matrimonii*, and by consequence, either of them might marry after, then admitting that the second marriage was avoydable, yet it remaind a marriage until it was dissolved, and by consequence, the issue that is born during the cohabitation, (if no divorce be in the life of the parties) is lawful, *Et homo potest esse habilis & inhabilis diversis temporibus*, and Judgement affirmed in Error.

Flowers Case, 41 El. Banco Regis, fol. 99.

An indictment of perjury upon 5. *El.* for giving false evidence to the great Inquest, is not within the Statute, for it must be in matter depending in law by Bill, Writ, action, or information, vide the Statute. *Plus peccat author quam actor.*

Rookes Case, 40 Eliz. fol. 99.

That the Commissioners in the Commission of sewers ought to tax all which are in damage, or in danger of damage, for non-repair of the Bancks, and not only him, which hath the Land next adjoyning the River. The Commission is grounded upon the Statute 6. *H. 6. cap. 5.* for if the Law were otherwise, great inconvenience might follow, for it might be

may assemble his Neighbours or friends to guard his House against violence ; but he may not assemble them to goe with him to the Market or abroad , to safe-guard him against violence, and the reason of this is, *Domus sua cuiq; est tutissimum refugium*. It was resolved , that when any house is recovered by a real action , or by *Ejectione firme* , the Sheriff may break the house , and deliver seisin or possession. It was also resolved, that in all cases where the King's Party , the Sheriff may break the House (if the Doores be shut) and make Execution of his Writ but before he break the House , he ought to signify the cause of his coming , and make request to have the Doores opened , *vest. 1 Cap. 17*, which Act is but an affirmance of the Common Law, but if the Officer break the house when he might have the Doores opened , he is a Trespassor, *41. Ass. pl. 35*. For felony, or suspicion of Felony , the Officer may break open the Door ; in all cases where the Door is open, the Sheriff may enter , and make Execution of his writ either for body or goods , at the sute of a subject, or the Lord may distrain for his rent. But it was Resolved , that the Sheriff at the sute of a common person (upon request made to open the Door and denial thereof) ought not to break open the Door or the house , to Execute any process at the Sute of any Subject, or to execute a *fieri facias* , being a writ of Execution , but he is a Trespassor, yet if he doe Execution in the House , it is good in the Law, being done, it was also Resolved, that the house of a man is not a Castle or defence for any other person but for the owner, his Family and goods , and not to protect another that flyeth into the same, or the goods of another, for then the Sheriff upon request and denial , may break the House . and doe Execution. And this is proved by the Statute of

1. ca. 17. whereby it is declared, that the Sheriff may break the House or the Castle to make replevin, when the goods of another that he hath distrained, are conveyed away, to prevent the owner, but in this case the Sheriff must demand the goods first.

Barwicks Case, 39. Eliz. in Exchequer, fol. 93.

THE Queen 28. Die Julii, Anno 26. demised the mannor of Sutton, to Humfrey Barwick, tenend. sibi a die confectiois. It was resolved, that the same 28. day of July, is excluded, and the demise began the 29. of July. It was also Resolved, that an estate of freehold cannot commence *In fut uro*, but ought to take effect presently in Possession, Reversion, or Remainder. A Lease for years may commence in future, but not a Lease for life, and the reason is, for that a Lease for years may be made without livery and seisin, but an estate of Freehold may not be made without livery, either in Deed or in Law, and therefore when a man maketh a Lease for Life, to commence at a day to come, he cannot make a present Livery to a future estate; and therefore in this case nothing passeth, and it is all one whether it commenceth at a day to come, or years to come, for the distance of the times doth not make alteration in this case, but in the case of two joynt Lessees, the Livery made to one is good in the name of both, for they have interest in the Land, before their entry, and livery to one in the name of both, maketh an actual possession in both, which is sufficient to support the remainder to a third person in Fee. *Vide Claytons Case*, in the Fifth Book, a License to occupy Land for one year, is a Lease for one year. 7. 1. in consideration of a former demise to be

be surrendered, which was false and void, is a void consideration, as to the Queen.

Goodalls Case, 40. El. Banco Regis, fo. 95.

Conditions for payment of money touching inheritance, ought to be truly performed, and not covinous, if they concern a third person. The Law doth not find an assignee in Law where there is an assignee in fact. *Expressum facit cessare tacitum*, affirmed in the Exchequer-chamber upon Error there brought.

Countesse of Nothumberlands case, 40 El. Communi Banco, fol. 97.

Fton and the Countesse of Nothumberland his wife, Sir Thomas Cicil Knight, and Dorothe his wife, William Cornwalleys, and Lucy his wife, and the Lady Davers, Daughters and Heirs of the Lord Latimer, brought a (*Quare impedit*) against Hall, who pleaded a release of William Cornwalleys, *pendente breve*, and it was adjudged that this should but goe in Barre only against William Cornwalleys and his wife, and the Writ should stand for others, and all shall yield in the others, because intire, and in the realty, presentment of the Lessor and Lessee is not double, for the Lessor's only traversable.

Buries Case, 40. El. in Communi Banco, fo. 98.

Between Vwebster and Burie in *Ejectione firmæ*, special verdict was given upon divorce between Burie and his wife, *causa frigiditytis*, and that his wife for three year, after the marriage, *Remansit virgo intacta propter perpetuam impotentiam generationis in*

... & quod vir fuit ineptus ad generandum; and in this special verdict, all the examinations of the Witnesses, upon which the Judge in the spiritual Court was moved to give his sentence, by which the perpetual disability of *Bury ad generandum* was manifest, were read; and by which it was pretended, that the issue which he had by a second wife was illegitimate, and this was the doubt of the Jury, and it was adjudged, that the issue of the second wife was Lawful, for it is clear that by the divorce (*causa frigiditatis*) the marriage is dissolved *a vinculo matrimonii*, and by consequence, either of them might marry after, then admitting that the second marriage was avoydable, yet it remayned a marriage until it was dissolved, and by consequence, the issue that is born during the coverture, (if no divorce be in the life of the parties) is lawful, *Et homo potest esse habilis & inhabilis diversis temporibus*, and Judgement affirmed in Error.

Flowers Case, 41 El. Banco Regis, fol. 99.

AN indictment of perjury upon 5. *El.* for giving false evidence to the great Inquest, is not within the Statute, for it must be in matter depending in law by Bill, Writ, action, or information, vide the Statute. *Plus peccat author quam actor.*

Rookes Case, 40 Eliz. fol. 99.

That the Commissioners in the Commission of sewers ought to tax all which are in damage, or in danger of damage, for non-repair of the Bancks, and not only him, which hath the Land next adjoyning to the River. The Commission is grounded upon the Statute 6. *H. 6. cap. 5.* for if the Law were otherwise, great inconvenience might follow, for it might be

be, that the rage and force of the water might be such, that the value of the Land adjoining would not serve to amend the Bancks, and therefore the Statute would have all in peril, and which take commodity by the making of the Bancks to be contributory, for *qui sentit commodum sentire debet & onus, & ipsæ leges cupiunt ut jure regantur.*

And notwithstanding by the words of the Commission, authority is given to the Commissioners, to do according to their discretions; yet their proceedings ought to be limited and bounded with the rule of the Law and reason. For discretion is a knowledge or understanding to discern between right and falsehood, truth and wrong, shadows and substances, equity and colourable glosses and pretences, and not to do according to their wills and private affection. For a learned Man saith, *Talis discretio discretionem confundit.*

Penruddocks Case, 40 Eliz. fol. 100.

IN a quod permittat between Clarke assignee of Thomas Chichley, Plaintiff, and Ed: Penruddock and Mary his wife defendants, assignee of on John Clarke for that Cock 20. 8 bris, 10. Marie, erected upon a freehold a house in St. Johns street so neer the Curialage of an house of Thomas Chichley, that *Domus super pendet, Anglice, doth overhang magnam partem delictet 3. pedes curtilagij the Plaintiff, sic quod aquæ pluviales de eadem domo decedentes solum ejusdem curtilagij conerunt, & magnopere ac indies magis consumunt & Devastant, ac ea ratione curtilagij quolibet pluviale tempore humectat. & inundat. existit quod prædictus Henricus Clarke inhabitans in eodem Messuagio nullum proficuum seu easimentum de eodem curtilagio percipere possit, ac nocumentum veri tenuenit præd': &c.* And it was resolved

that the distilling of the waters in the time of the Feoffee or Assignee is a new wrong; and this Writ lyeth after request of amendment, but not before, but it lyeth against him that did the wrong without request, and the action good, &c.

windsors Case, 41 Eliz. fol. 102.

Na quare impedit by *windsor* against the Archbishop of *Cantebury* for the Church of *Buscott* in the County of *Bark*: It was adjudged, that if two have title to present by turn, and the one present, who is admitted, instituted, and inducted, and afterwards is deprived for Crime, Heresie, &c. yet that Patron should not present again, but that shall serve for his turn. So likewise if he present a meer *Laicus*, which was admitted, instituted, and inducted, although it be declared by sentence, that he was incapable, and therefore void *ab initio*, yet because the Church was full untill the sentence declaratory be pronounced, yet that shall serve for his Turn. But when the admission and institution are merely void, then that shall not serve for one Turn, as if a presentee be once admitted, instituted, and inducted, but hath not subscribed to the Articles, &c. according to the Statute of 13 *Eliz.* by which in this case the admission, institution, and induction are void, 23 *El. Dier pl. ult. ace.*

Hungatts Case, 43 El. Com. Banco, fol. 103.

Hungatt brought an action of debt upon an Obligation against *Mese* and *Smith*, the condition was to perform an award between the Plaintiff on the one party, and the Defendants on the other; *Ita quod arbitrium præd. fiat & deliberetur utrique partium præd.*

præd. before such a day, the arbitrament before the day was delivered to the Plaintiff, and to *Mese*, but not to *Smith*, Judgment was given against the Plaintiff. It was resolved, that if two be of one party, and two of another, and the words are *Ita quod de liber. utriq; partium*, That the delivery of the arbitrament to one of the one part, and another of the other party is not sufficient; For the party is to be intended of the whole party, for one is as well with in the penalty and danger of the Obligation as the other; and *uterq;* is taken sometimes *Discretive*, sometimes *Collective*, *Secundum subjectam materiam*; but here it is taken *Collective*.

Bakers Case. 42. Eliz. fol. 104.

IF a Plaintiff in evidence shew any matter in writing or record, or any sentence in the Ecclesiastical Court, whereupon Law doth arise, and the Defendant offer to demurre in Law upon the same, the Plaintiff cannot refuse to joyn, or wave his evidence, and so on the other party, and the reason is for that matter in Law, shall not be put in the mouth of Laymen; but the King in this case is at liberty.

Bulstons Case, 40. El. in communi banco, fol. 104.

IT was adjudged that if a man make Cony-borowes in his own Land, and the conies encrease to so great a number, that they destroy his Neighbour's ground adjoyning; The Neighbours may not have an action of the Case; for presently when the Conies come into his Neighbors ground he may kill them, because they are *feræ naturæ*. And in this case it was resolved, that none may newly erect a Dove-hoase, but the Lord of a mannor, and if any

do, he may be punished in the Leet; But no act^e of the case lyeth for any particular man, for the infinite^e of actions that might be brought. And on this opinion touching the new erecting of a Dovecote, was Sir Roger Manwood, chief Baron, and the Barons of the Exchequer in the Exchequer Chamber.

Aldens Case, 43. Eliz. Com. Banco, fol. 105.

Antient demise is a good plea in an *Ejectione Firma*, although it is not in trespass, because by indentment the freehold may come in debate, and the interest of the Land is bound; antient demesne is extendable upon a Statute by *Elegit*, but in an assise by tenant by *Elegit*, antient demesne is a good plea. 22. Ass. Pl. 45.

Sir Henry Constables Case, 43. El. in banco le roy, fo. 106

Nothing shall be said *wreccum maris*, but such goods only, which are cast or left upon the Land by the Sea; *Flotsam maris*, is when a Ship is drowned, or otherwise perish, and the goods flote upon the Sea; *jetsam maris*, is when a Ship is in perill of drowning, as for disburthening thereof, the goods are cast into the Sea, and after notwithstanding the Ship perish. *Lagan vel potius Ligan*, is when the goods so cast out of the Ship, and the Ship perish, and such goods are so ponderous that they sinke to the bottome, and the mariners to the intent to find them, bind thereunto a Boy or a Corke, or other such thing to find them again; Et dicitur *Ligan a Ligando*, and none of these words which are called *Flotsam*, *jetsam*, or *Ligan*, are called wreck, so long as they remain in or upon the Sea; but if any

of them be cast upon the Land by the Sea, then it is said to be wreck, and by the Statute 15 R. 2. ca. 3. the Lord Admiral shall not have conusance or jurisdiction of wreck of Sea; but of the other three he hath; for wreck is when the goods are cast upon the Land, and so within some County, wherof the Common Law may take Conusance; But the other three are upon the Sea, *Magis proprie dici poterit wreccum, si Navis frangatur & ex qua nullus vivus evasit, & maxime si dominus rerum submersus fuerit, & quicquid inde ad terram venerit erit domini Regis*; wreck may by prescription belong to the Lord of a Mannor. It was resolved also, that the soyl upon which the Sea doth flow and reflow, *scil.* Between the high water mark, and the low water mark, may be parcel of the Mannor of a Subject. 16 El. Dier. And it was resolved, that when the Sea doth flow, *ad plenitudinem maris*, the high Admiral shall have jurisdiction of every thing done upon the water, between the high water mark, and the low water mark, as felony, &c. No proof is allowable by the Law, but the verdict of twelve men; part of the goods were wreck, and part not, and damage assessed intirely, *ergo* judgment given for the Defendant. The King shall have *flotsam* upon the Sea, because within the ligeance of the King.

Foxleys Case, 43 El. Banco Regis, fol. 109.

IT was resolved, if a Felon steal any goods, and leave them in a Mannor or Town, or in his house, or in the house of another, or hide them in the earth, or any other secret place, and afterward fly, these goods are not forfeited, nor waife goods in the Law, for waife is where a felon in pursute, waveth or leaveth the goods, or for fear to be taken, thinking that pursute was or is made, having the goods with him in his

possession, flyeth away and leaveth the goods. In these cases the goods shall be said waved in Law; But if he had not the goods with him, when he did fly being pursued, or for fear of being apprehended, the goods are not waved, nor forfeited, but the owner may take them again when he will, without any fresh surety. But if the Felon in his flying wave them, the goods are forfeited by the common Law; If the Felon upon fresh sure be not attaint, at the sure of the owner of the goods. And the reason that wave is given to the King, is for default of the owner, that he doth not make fresh sure after, for to apprehend the Felon. Wherefore the Law doth impose the penalty on the owner.

Bona fugitivorum are the proper goods of him that flyeth away for felony; But it is to be observed, that if a man fly for felony his goods are not forfeited, until they be found by indictment or otherwise lawfully found of Record upon his acquittal, that he fled for the felony, they cannot be claimed by prescription, because the things forfeited by matter of record, cannot be claimed by prescription.

But waife, stray, treasure, trove, wreck of the Sea, &c. which things may be gained by usage without matter of record, there a man may prescribe to have *Bona & catalla felonum*; in some cases *Bona & catalla felonum* shall be forfeited by conviction, and sometimes without conviction, but alwaies when any forfeiture of any goods of felons, it ought to appear of Record, and that is the cause that such goods cannot be claimed by prescription.

Deodanda, are goods which cause the death of a man by misadventure, and are not forfeited, until they be found of Record, & therefore cannot be claimed by prescription, & the Jury that presents or finds the death, ought to find and apprise the *Deodandum*

also,

also *omnia que movent ad mortem sunt deodanda*, & *catalla in exigendo positorum*, are when any be appealed or indicted of felony, and withdraw or absent himself, for so long time a an exigent is awarded against him for his absenting (which is a flying away in Law) he shall forfeit all his goods and chattels which he had at the time of the exigent, and after he be found not guilty, 22. *Lib. Ass.* Look the Statute 21. H. 8. ca. 11. Concerning goods waved, and restitution, &c.

Mallaries Case, 43 Eliz. fol. 111.

Rendring rent to one and his heirs, and to one or his heirs, are all one; but a Feoffment *temporarium* to one or his heirs, is but during the life of the Feoffee; *Nemo potest plus juris in alium transferre quam ipse habet*; this case consisteth much upon attornments. *Vide le case.*

wades case, 43 Eliz. in Communi Banco, fo. 114.

A man was bound to pay 250. *li. Legal. monet.* *Anglie*, on a day certain, the last time of the day that so much money can be numbered is the best time, so that it be before the setting of the Sun, and the most convenient time by Law, that both parties may meet: five shillings in Spanish money, and two pistolets in gold were tendered. It was resolved that the Spanish silver was lawful money of England by Proclamation in *tempore Philippi & Mariae*, and so French Crowns; for the King by his Prerogative and Proclamation may make any forein coin lawful money of England: That if a man tender more than he is bound to pay, it is good, *Omne majus continet in se minus*, That the tendring of 250. *li.* in base without

without shewing or numbering the same is good tender, if the truth be that there was so much, *Vide winters case*, if there be any counterfeit money in the same, yet if the party then accept the same, he cannot compel the party to change it, or if it be rent, or for non payment a reentree, yet the once acceptance is good, and the lessor may not reenter.

Foliambes Case, 43 Eliz. fo. 115.

IN a writ of *Estrepement*, the Sheriff may resist them that will make waste, or cut down Trees, and if he cannot otherwise, he may imprison them, and may make warrants to others, and he may take *Posse comitatus* for his aid. A writ of *Estrepement* lyeth in an Action of waste, as well before judgement as after.

Olands Case, 44. Eliz. Banco regis, fo. 116.

A Feme Copy-holder *Durante viduitate*, sowes the Land and taketh Hasband, the Lord shall have the Corn, for although her estate was incertain, yet it was determined by her own act; so if Lessee at will sowe the Land, and determine the will, but if Baron and Feme are Lessees during the coverture, and the Baron sowe the Land, and they are after Divorced, *causa præcontractus*, the Baron shall have the Emblements, because this is the Act of the Court.

Pynnels Case, 44 Eliz. fo. 117. com. banco.

Pynnel brought an action of Debt upon an Obligation against Cole, of 16. l. for payment of 8. l. 10. s. on the 11. of Nov. 1600. The Defendant plead-

pleaded, that at the instance of the Plaintiff before the said day he paid him 5. l. 10. s. and it was resolved by all the Court, that the payment of a lesser summe in satisfaction of a greater summe, cannot be satisfaction for all, so that by no possibility a manner summe may satisfie the Plaintiff of a greater, but the gift of an Horse, Cow, Robe, &c. in satisfaction is good.

But in this case it was resolved, That the payment of a parcell, and acceptance thereof before the day, in satisfaction of all, is a good satisfaction, in respect of the circumstance of time; for peradventure, parcel of that before the day, may be more beneficial unto him than the whole sum of money at the day, and the value of satisfaction is not material, for if I be bound to pay you 10 l. at *westminster*, and you request me to pay 5 l. at *York*, and you will accept the same in full satisfaction of the 10 l. this is a good satisfaction in respect of the place, but in this case, the Plaintiff had judgement for the insufficient pleading, for he did not plead that he had paid 5. l. 10. s. in full satisfaction, (as by Law he ought) but pleaded the payment of part generally, and the Plaintiff accepted the same in full satisfaction, and alwayes the manner of the tender, and of the payment shall be directed by him that maketh the tender and payment, and not by him that accepteth it.

Edriches Case, 1. Jacobi, Com. Banco, fo. 118.

A Rent charge is granted to B. for the life of C. the Grantor leaseth for life to D. the remainder in Fee to E. C. and D. dyes, B. distrains E. for all arreares, this is good by the Statute of 32. H. 8. cap. 37.

where it should be *Plaga*, over-ruled because *Synonima*. 4. *Le depthe* is not shewed, it was said, that it did penetrate all his body, whereby it appeared that it was mortal. 5. It is said, that the wound did penetrate his body, and not the Bullet, this is significant enough. 6. *Percussit* wanteth, and for this cause the Indictment was quashed, for in all cases of death this ought to be, except in case of poisoning, and for this last error the Outlary was reversed, and H. D. was discharged.

Saffins Case, 3. *Jacob. fo. 123. com. banco.*

A Man maketh a Lease for years to commence after the end or determination of a former Lease *In esse*. The first Lease endeth, the second Lessee doth not enter, but he in reversion entreth, and maketh a Feoffment, and levyeth a fine with Proclamations, and five years passe without entry or claim of the second Lessee. If this fine be a Barre, was the Question, and it was resolved to be a Barre, for the Statute of 4. H. 7. c. 24. speaks of interest, and a Lease for years is an interest within the Statute, so of tenant by *Elegit*, &c.

De Libellis famosis, 3. *Jac. fo. 125.*

A Libel may be made as well against a private man as against a Magistrate, *Non refert*, whether the Libel be true, or whether the party be of good fame, or ill fame, for it inciteth all the same Family Kindred, or Society to revenge, and so tendereth by consequence to the effusion of blood. It was resolved in the Stare-chamber, 44. *Eliz. Hallywoods Case*, that if any find a Pibel, and would preserve himself out of danger, if it be against a private man, the

finder

under may either burn it, or presently deliver it to a Magistrate, but if it concern a Magistrate or publick person, then he ought to give it to a Magistrate. A Libel may be as well by words, *Verbis aut cantile-* as writings, and by pictures or Ignominious signs, as Gallows, &c. The punishment is by Indictment, as in the Star-Chamber.

Palmer's Case, 8. Jac. 126. banco regis.

THE Gardian in Chivalty shall have the single value of the Mariage of the Heir without tender, otherwise the Heir may defeat the Lord by Mariage, or goe beyond the Sea, and so prevent the Lord of any tender, if it were requisite.

Caudreyes Case, 33 Eliz. in Trespassse.

THE Jury found the Statute of 1. Eliz. cap. 1. and cap. 2. and that the Plaintiff was deprived for Preaching against the Book of Common Prayer; by the Bishop of London, *una cum assensu*, &c.

Resol. 1. The deprivation was good for the first offence, because the Act of 1. Eliz. for uniformity of Common Prayer doth not abrogate 1. Eliz. for Ecclesiastical Jurisdiction without negative words, and by an expresse proviso the Jurisdiction of the Bishop is saved.

Resolv. 2. That sentence given by the Bishop by consent of his Collegues, ought to be allowed by our Law.

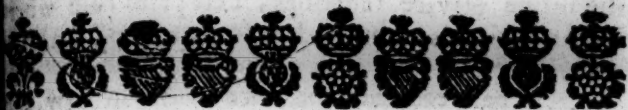
Resolv. 3. That Commissioners shall be intended Subjects born, &c. *Stabimur presumptioni*, &c. Also it is found that the King authorized them, *secundum formam Statuti*.

Resolv. 4. The Act of 1. Eliz. for Ecclesiastical Juris-

Jurisdiction was only declaratory, for the King being an absolute Monarch, and head of the body politic, had plenary power to minister justice to Subjects in Causes Ecclesiastical and remporal. See *Circumspecte agatis*, 13 F. 1. and *Articuli Cleri*. 9. 2. *Reges sacro oleo uncti sunt spiritualis jurisdictionis capaces*. See there diverse judgements, Laws, and Acts of Parliament, cited to prove the Kings supremacy in Causes Ecclesiastical.

The end of the Fifth Book.





THE SIXTH BOOK.

Where Services intire shall be Apportioned:

*Bruertons Case, 36 Eliz. In the Court. of Wards.
Fol. I.*



LORD and Tenant of the three Acres, by Homage, Fealty, a Hawk and Sure of Court, the Tenant makes a Feoffment of one Acre, the Feoffee by the common Law shall hold by all intire services, annual and casual, and the Statute of *Quia emptores Terrarum*, doth not extend to intire services, but by the Statute of *Marlebr.* c. 9. the Feoffees shall make but one Sute, and, he who doth it shall have Contribution against the others, if they are severally infeoffed; otherwise it is jointly.

2. Intire services shall be multiplied by the Act of the Tenant, and extinct by the Act of the Lord, as if he purchase part.

3. By Act of the Lord intire service for his private benefit is extinct, otherwise if it be for the publick good, for works of Charity, Devotion, or Administration of Justice.

4. If part comes to the Lord by Act in Law, yet the

the intire service remaines, except in case where Contribution is to be made, for the Land shall contribute.

5. If part comes to the Lord by Act in Law, and of himself as by recovery in a *Cessavit*, all the intire services are gone.

where the Parol shall demurre for the nonage of the Demandant, and where the Tenant shall have his Age.

Markals Case, 35. Elix. com banco, fo. 3.

IN a Formedon in the remainder by an Infant a remainder limited to his Father, and his heirs, the Tenant cannot pray, that the Parol may demur, but in a Formedon in the reverter he may: In actions auncestrel, the Tenant may pray that the parol may demur, because a right only descends to the Infant, and the Law will not suffer him to sue, for fear that he may lose for want of understanding, but in possessory Actions he cannot, because then every one will put Infants out of possession, and it would be mischievous if they should not regain their possession untill full age: So it is in all Writs where the cause of actions happens in the time of the Infant, And as to actions auncestrel, they are of two sorts. Droiturel and possessory, the first is where a right only descends from the Auncestor, and the Infant ought to lay the explees in the Auncestor, and there the Tenant (without plea pleaded) may pray that the parol may demur, but if the Auncestor was never in possession (as in this case he was not) and the Infant himself is the first in whom it vests

there (without plea pleaded) he shall not pray that the Parol may demurre; but if a right discend from an auncestor who was in possession, although the Action doth not discend, the Tenant may pray that the Parol may demurre, as if *Non compos mentis* alien and dye: In actions auncestrel possessory, the Parol shall not demurre without plea: but if at the common Law the Tenant had pleaded a feoffment of the auncestor, then he may pray, &c. by the Statute of Gloucester, cap. 2. aideth that in the Writs of Cosinage, Bcsaiel, and Aiel, but this extends not to other actions, in a Formedon, in the descender, where an Infant recovers, but a limited estate the Parol shall not demur without plea, in an assize, or assize of *Morduncestre*, the Parol shall not demurr because the Jury is to appear the first day, and try all things.

The Statute of *westm.* 1. cap. 46. Age is taken away in entry upon disseisin, where fresh sure is made, but an Infant shall have his age in all real Actions, where he is in by discent, and the Action is not founded upon his own wrong, except in *Nuper obiit*, and *Partitio facienda*, where both are in possession or attaint, for the mischief of the death of the Petty Jury. The Statute of *westm.* cap. 40. Ousteth the age of the vouches in *cui*, in *vita*, and *Sur cui*, in *vita*, although that the Tenant will answer, if the parol ought to demurr, yet the Court ought to award that the parol shall demurr.

Sir John Molyns Case, 45 Eliz. in *Scaccar*, fol. 5.

King Edward the third, Lord Abbot of *Westminster*, Mesne, and C. Tenant. C. is attainted of Treason, the King grants to Sir Jo. Mo. *Tenendum de vobis & aliis capitalibus dominis feodi illius per servitia,*

R

&c.

&c. the Mesnalty is revived. *Obj.* 1. That the tenure shall be *Per servitia inde debita*, at which time no service was due to the Mesne. 2. An expresse tenure of the King is limited, and it cannot be immediately holden but of one. To the first it was answered, that there are sufficient words to renew the Mesnalty, because the intention of the King, appears to be so, and it is reasonable, that the Mesne who offered not should not suffer losse. 2. It shall be holden immediately of the Abbot, and mediately of the King.

wheelers Case, 43 Eliz. in Scaccario, fo. 6.

THe King grants Land *Tenendum* by a Rose, *Pro omnibus servitiis*, this is Soccage in chief, and the tenure shall be by tealty and a Rose, and (*Pro omnibus*) is to be intended of other services which the Law doth not imply.

Resolutions and Diversities when a Barre in one action shall be a Barre in another.

Ferrers case, 41 Eliz. Com. Banco, fol. 7.

IF one be Barred by plea to the Writ, he may have the same Writ again; if by plea to the substance of the Writ, he may have his right action: If the plea be to the action, and he be Barred by Judgment upon demurrer, confession or verdict, in personal action it is a Barre for ever, and in real action he is put to a Writ of higher nature, as Barre in assize barreth one in Entry in nature of an assize but he may have an assize of Mortdaumester, &c. But Barre is not perpetual if those who are barred

have not the meer right, therefore the heir in tail who is barred shall have the same action, so of the Successor of a Parson, if he doth not pray in aid of the Patron and ordinary; he who lost by default before the Statute of *westminster*, 2. cap. 4. was put to a Writ of Right, and if he could not have this writ, he was without remedy: In case where a Writ of Entry in the post lyeth now, no remedy was before the Statute of *Marlebridge*, cap. 29. but a Writ of right. See there divers inconveniences which insue upon the breach or alteration of the ancient and fundamental rules of the Common Law: *Interest Reipublice ut sit finis litium.*

where a Writ shall be brought by Journeys accounts.

Spencers Case, 45 Eliz. Com. Banco, fol. 9.

If a Formedon abate for undue summons, the demandant may have another by Journeys accompts.

1. *Resol.* If a Writ abate by default of the demandant himself, he shall not have another Writ by Journeys accompts, otherwise it is if by default of the Clerk or Sheriff, as in this case: if a Writ abate for non-tenure of all, he shall not have, &c. But if a Praecipe abate for non-tenure of parcel, he shall have another, so if it abate for joyntenancy of part of the demandant he shall not have a new Writ because he had notice, otherwise it is of the part of the Tenant: And this Writ shall be alwayes betwixt the parties to the first Writ, and of the same quantity of Acres. A Judicial Writ shall never be sued by Journeys accompts, because it shall never abate in form.

2. The second Writ is *quass*, a continuance

ance of the first Writ, therefore all pleas which relate to the purchase of the Writ shall be pleaded from the purchase of the first Writ, and costs of the first Writ shall be recovered, 32. E. 3. Journeys accompted 16. 15. dayes were allowed.

*Gentlemans Case, 25 Eliz, concerning Judges
of Courts, fol. 11.*

IN the Hundred Courts the Sutors are Judges, in the Court of Pypowders, the Steward is Judge; in a Leet, the Steward is Judge: In a Court Baron, the Sutors which are by the Common Law are Judges. *Rex seſſatoribus Curie, &c. Vobis mandamus, &c. ad iudicium reddendum, &c. procedatis:* but in Redifick the Sheriff is Judge, by the Statute of Merton, cap. 1. and in the Tourne.

Morries Case, 27 Eliz. Com. Banco, fol. 12.

IT was adjudged, that after the act of 28. H. 8. although jointenants be compellable to make partition by Writ, as well as Copartners, yet they may not make partition by words, as Copartners may by the Common Law. If two jointenants make partition by Writ, the warranty remaineth, otherwise it is if it be by deed by consent.

Cases of Pardon, 29 Eliz. fol. 13.

Burton Parson of Isbock in Leic. was deprived 12. El. for committing Adultery, and after the general pardon 2. Apr. 13. El. the offence of adultery (*int. alia*) was pardoned, before the 14 of February then last past. And it was said, that before pardon, that *crimen adulterii præd. transiit in iudicium*

judicatam, and therefore the sentence should remain in force; And therefore until the sentence were reversed the deprivation was in force. But it was resolved, that *Burton* by vertue of the said pardon is become Parson again, without any sentence declaring the said deprivation to be voyd: for by the pardon the Adultery which was the cause of the sentence is discharged, and by consequence, all that which did stand or depend upon the same foundation is also discharged, *Vide 20. El. dyer.*

A. was bound in a Statute of 20 li. to B. B. sued Execution, and the Lands of A. were delivered in Execution, and after B. maketh Defeasance to A. by Indenture, that if A. doe pay to B. 8. li. at a certain day, that then the Statute to be voyd; and it was adjudged that although the Statute was executed, yet the Defeasance of the Statutes was sufficient in Law to defeat as well the Statute, as the Execution thereof; For the Statute is the foundation of all, and if that be defeated, all that is builded on the same, shall be defeated also, 20. ass. pla. 7. Burglary was excepted out of the general pardon of 28. Eliz. by that the attainder of Burglary is excepted, for the offence remains after judgment, and is the foundation of

Arundels Case, 36 Eliz. Banco Regis, fol. 14.

A Nindlement of murder in King Street in W. and the Visne from W. and it was vitious, for it ought to be from the most certain place, that is the Parish, for W. being a City it shall be intended that it is greater then the Parish, and therefore a new *visne facias* was awarded.

Treperts Case, 36 El. Banco Regis, fol. 14.

A. Tenant for life, remainder in fee to B. both by Deed indented, joyn in a Lease to Trepert; the question was whether the same shall be adjudged by Law, the Lease of both of them or not; And it was resolved, that it was the Lease of A. during his life and the confirmation of B. and after the death of A. it was the Lease of B. and the confirmation of A. and because the Plaintiff had declared of a joynt demise of A. and B. it was adjudged against the Plaintiff in an *Ejectione firme*. If Tenant for life, and he in remainder joyn in a Lease, rendring rent, tenant for life shall have the rent during his life.

Edens Case, 37 Eliz. Banco Regis, fol. 15

Riens passa by Letters Patents shall be tryed where the Land is, not where the patent beares date, for the Patent is not traversed; but the effect of the issue is, whether the Queen had the said land to the grant or nor.

Colyers Case, 37 Eliz. Com. Banco, fol. 16.

One deviseth to his daughter for life, and after to his brother, paying 20. s. to I. S. the brother had fee for the summe to be paid by him, for otherwise he may pay the 20. s. and die without satisfaction; but if the payment be to be made out of the profit of the Land, he shall have but for life, for there he can be at no prejudice.

Wyldes

Wylde's Case. 41 Eliz. Banco Regis, fol. 16.

A Man deviseth Lands to the husband and the wife, and to the children of their bodies; The question was, whether they have an estate for life, or an inheritance in tail. And it was resolved, that if they had children at the time of the demise made, then they had but an estate for life; But if they had no children, then they had an estate of inheritance in tail.

Sir Edward Cleeres Case, 42 Eliz. fo. 17.

A Man is seized of three acres of Land holden *in capite*, and maketh a Feoffment in Fee of two of them, to the use of his wife for her life; and after maketh a feoffment by deed of the third acre, to the use of such persons, and of such estate and estates as he should limit and appoint by his last Will in writing; And afterwards by his last Will in writing, he devised the said third Acre to one in Fee; and if this Devise was good for all the third Acre, or nor, or for two parts thereof, or void for all, was the question; And it was adjudged, that the devise was good; For the Feoffor by his last Will limited the estates according to his power, reserved to him upon the Feoffment, the estates should take effect by force of the Feoffment, and the use is directed by the Will; So as in this case the Will is only directory; But if he declared his Will by Writing without any reference to his authority or power, as owner of the Land, and to limit no use according to his power. In this case the Land being holden *in capite*, the Devise is good for two parts, and void for the third part. If a man make a Feoffment in Fee of Lands *in capite*, to

the use of his last Will, although he Devise the Land with reference to the Feoffment, yet the Will voyd for a third part; for a Feoffment to the use of his last Will, and to the use of him, and his heirs all one.

In this case when the party had conveyed two parts to the use of his wife, by his act executed he cannot as owner of the Land devise any part of the residue by his Will, and therefore because he hath not an election as in the case put before, whether to limit according to his power, or devise the same as owner of the Land, for in the case at Barr as owner of the Land, (having conveyed two parts to the use of his wife,) he cannot make any Devise. The Devise of necessity must inure a limitation of the use, otherwise the Devise should be altogether voyd.

Packmans Case. 37 Eliz. Banco Regis, fol 18.

Wilson brought an Action upon the Case upon Trover against Packman. The Case was thus: A man dyed Intestate, and the Ordinary committed the Administration to a Stranger, and after the next of kindred of the Decedent sued out a Citation in the Court Christian, to have it repealed and (*pendente lite*) the administrator to defeat the Plaintiff's sale of the goods of the decedent to the defendant, and after the Letters of Administration, were revoked by sentence, and the first sentence annulled & made voyd, and the administration granted to the Plaintiff. And it was resolved, that the action did not lye; and in this case the diversitie was holden, between a Court by Citation, for to countermand or revoke the former administration, and an appeal, which is always a reserving of a former sentence, for an appeal doth suspend the former sentence, otherwise of a Citation.

And in this case because the first Administrator had the absolute property of the goods in him, without question he may sell them to whom he will, and although the Administration be revoked afterwards, yet that cannot defeat the Sale. But if the sale or gift be by covine, it is voyd against Creditors by the Statute of 13. *El.* but it is good against a second Administrator. And if an Administrator wast the goods, and afterwards the Administration is granted to another, yet every debtor shall charge him in debt. An Administration may be granted upon condition, and whatsoever the Administrator doth before the condition broken, is good.

Gregories Case, 38 El. Banco Regis, fol. 20.

Verba equivoca & in dubio posita, intelliguntur in digniori & potentiori sensu, secundum excellentiam, if the speech be or writing of J. S. generally it shall be intended of the father, where the father and sonne are both of a name; and if it be of two Brothers both of a name, it shall be intended of the eldest, for these are more worthy; so where the Statute of 4. & 5. *Phil. & Ma.* speaketh in any Court of Record, it shall be intended of the four Courts at Westminster, because the Kings Attorney is attendant there.

Michelbornes Case, 38 Eliz. Banco Regis, fol. 21.

The Court of Marshalsea, doth only hold plea of actions of trespass, within the verge, if the one of the parties be of the Kings houthould, and in contracts and Covenants, where both parties are of the Kings houthould, and of none other actions, nor persons, by Act of *Articuli super Charta. 28. E. 1.*

Butler,

Butler and Goodalls Case, 40 El. Banco Regis, fol. 1.

IT was resolved upon the Statute of 21. H. 8. that a Parson of a Church ought to stay and be Comorant upon his Rectory (*viz.*) upon the Parsonage-house, and not in any other house, although it be within the Parish, but lawful imprisonment without covine, is a good excuse of non-residence: also where there be no Parsonage house, for *impotentia ex Legem*; also sicknesse without fraud, if the patient move by advice of his Counsel in Physick bona fide for better air, and recovery of his health.

Ambrosia Gorges Case, 40 El. fo. 22. in Cur. Wardm.

IT was resolved, that the Father shall have the Wardship of his Daughter and heir apparent, as long as she continueth his heir apparent; but when the Father hath issue a sonne, then she shall be ward to the Queen; for then he is heir apparent, and not the daughter. *Ambrosia* was daughter of Sir Arthur Gorge, by Douglas, Daughter and Heir of Count Bindon, and was married to Francis Gorge, which Francis dyed, when *Ambrosia* was of ten years of age. It was resolved also that the Queen notwithstanding the said mariage, should have the Wardship of the said *Ambrosia*; for it was not a Compleat mariage, because to every marriage there ought to be a consent, For *Consensus non concubitus facit matrimonium, & consensire non possunt ante annos nobiles*, And upon conference had with the Civilians it was agreed after such a mariage, if the Husband and the Wife marry again, it shall not be counted bigamic, and 30. E. 1. tit. Gard. 156. if the Ancestor marry his heir *infra annos nobiles*, and die, the Lord shall receive

5. *Marquesse of Winchester's Case.* 251
to recover the body of the Infant, because the heir may
agree; It was agreed that the grandfather shall
have the wardship of the son within age, the fa-
ther being dead in his life time.

*Marquesse of Winchester his case, 41 Eliz.
fol. 23. in Banco Regis.*

Y the Law it is not sufficient, that the Testator be
of memory (when he makes his Will) to answer
ordinary and usual questions, but he ought to have
disposing memory, so as he is able to make disposi-
tion of his Lands with understanding and reason.
And this is such a memory, which is called safe and
perfect memory, otherwise a Prohibition lyeth at the
common Law generally, to stay all the proceedings in
the spiritual Court, as the Probate of the Will, &c.
until this Suggestion be tryed at the common Law.

Reads Case, 42 Eliz. Banco Regis, fol. 24.

Whereas the Defendant makes title, for that A.
W. was seised in fee, and leased to him, the Plain-
maketh title by descent, and traverseth the Lease,
and good, for it may be true, that A. W. was seised,
yet that a descent was cast to the Plaintiff, there-
fore the Lease is most material to be traversed.

Helyars Case, 41 Eliz. Banco Regis, fol. 24.

Na Replevin the Defendant avoweth by granton
term by I. A. to S. from whom he claimeth, the
Plaintiff pleads in Barre, that I. A. Married T. who
by a former deed granted the term to the Plaintiff,
and

and traverſeth the grant made to S. and vitious, he who claimeth by the firſt aſſignment ſhall not traverſe the ſecond, but he who claims by the ſecond ſhall traverſe the firſt. But the firſt Feoffee ſhall not traverſe the laſt feoffment, and the laſt feoffee ſhall not traverſe the firſt feoffment, becauſe ſee may be given by diſſeiſin after the firſt feoffment, but a Leaſe for years cannot.

Ruddocks Case, 41 Eliz. fo. 25. Com. Banco.

IN replevin againſt fix, the Plaintiff recovers, the Defendants bring error, the Plaintiff pleads the release of one of them, not good; Where diſſeiſin to recover a perſonal thing, the release or default of one barrs all, but not where they are to diſcharge themſelves of a perſonality, if they are compelled to joyn, as in error an attainr, otherwiſe in Outlawry becauſe not compellable to joyn, for where they are to diſcharge themſelves, they have no joint intereſt, and although they ſhall have their damages ſatisfied, it ſhall be intended that they paid them of the ſeveral goods, otherwiſe it may be doubted if Execution had been made of goods, which they have jointly.

Sharps Case, 41 Eliz. fo. 26 Com. Banco.

IF a man make a Feoffment, in Fee, or a Leaſe for life, and ſay to the Feoffee (being either on Lands, or within the view) *enter into this Land and enjoy the ſame*, according to this deed, &c. this ſhall be good livery; but the delivery of the deed upon Lands without any further ceremony or ſaying, ſhall not amount to a Livery. *Throughgoods Case. Jacobi*, in ninth Book. The actual delivery ſhall

writing, sealed to the party without any words, is good livery, but not a livery of seisin, although the party be upon the ground.

If I deliver a Deed unto the feoffee or Lessee of the Messuage, mentioned in the Deed in the name of seisin of the said Messuage, and of all the Lands, tenements, &c. in the same contained, or other such like words, without any ceremony, or act done, this is a good seisin.

The Cases of Souldiers, 43 Elix. fol. 27.

The Statute of 7. H. 7. cap. 1. and 3. H. 8. cap. 5. against Souldiers who run away, are acts perpetual, for the word King includeth all his succession, and gift to the King inureth to his Successors.

Vicount Mountagues Case, 43 Elix. in Staccar, fol. 27.

Vicount M. with License to the K. suffers a recovery to B. and D. to uses with power of reversion and limiting of new, and revokes and limits new uses, the King shall have no fine for alienation.

2. Resolved, if the King doth license to alien to one, and alienation is made to the use of another, the King shall not have a fine, for although that the King was not informed of his Tenant, yet the use is executed by the Statute of 27. H. 8. which can do no wrong, and the proviso in the Statute, that a fine shall be paid for executing of uses, is to be intended of uses raised by Covenant, or declared upon a Fine, Feoffment, &c. when no License of alienation is obtained.

2. Al-

2. Although that by revocation, and new limitation of uses, the Tenant of the King be altered, yet no fine is due, because all ariseth out of the Estate B. and D. which was made with License.

Greenes Case, 44 Eliz. Banco Regis, fol. 29.

TENANT for life, of a Mannor to which an advowson is appendant, the remainder in Fee tol. S. presenteth one, who at the sute of the Tenant for life is deprived for not reading the Articles; but no notice is given to the Patron, the Queen by lapse presents the Defendant, Tenant for life, and his incumberer, he in the remainder presents the Plaintiff Green who recovereth.

1. Resolv. Although the Patron were party to the Sute, and so had notice, yet lapse shall not incur without notice given by the ordinary, as the Statute speaks, and the notice ought to be special, that he did not read the Articles, and therefore was deprived, and general notice is not sufficient.

2. The Church is void, *Ipso facto*, by the Statute of 13. *Eliz.* without deprivation.

3. If the Queen present *Ratione Lapsus*, where she is Patron, this is voyd, *a fortiori*, when she had no title at all.

4. The Patron is not put to a *Quare impedit*, by presenting him who read not the Articles, nor by collation, but by Collation of him who had right to Collate, the Patron is put out of possession.

5. The Queen may be put out of possession of an advowson, because it is transitory, but she cannot be put to a Writ of right of advowson, for none can gain the inheritance from her by wrong.

Boothies Case, 3 Jacobi, Com. Banco, fol. 30.

The condition of an Obligation, is to deliver an Obligation to the Obligee, and to acknowledge satisfaction, it must be done in convenient time, for as transitory to be done to the Obligee, although a place be appointed, shall be done in convenient time, and acts of their nature local, ought to be performed in convenient time, if concurrence of the Obligor and Obligee be not requisite. Also here the delivery of the bond being transitory, and the acknowledging satisfaction such an act as may be performed in the presence of the Obligee, they ought to be done in convenient time, without request; but if the act be local, and their concurrence necessary, the Obligor must do it in time, during his life, if not hastened by request: if the concurrence of the Obligor and a stranger be necessary, it ought to be done in convenient time, if the concurrence of the Obligee and a stranger, it ought to be hastened by request: and alwayes, if the Act to be done is not for the benefit of the obligee, but a labour to the Obligor, or a stranger, there he had time during his Life.

Fitz-Williams Case, 2. Jacobi, Banco Regis, 32.

Baron and Feme Tenants for life, and to the heirs of the body of the Baron, the Baron sole is touched; in a common recovery, the taylor is Barred. *Pladicks Case, 3. Report. 2. Resol.* If the tenant in tail suffer a recovery to his own use, the remainder to a wife with diverse remainders over, with power of revocation and limitation of new uses by any such thing, he revoketh all the remainders except that to his Wife; and by the same deed limits new uses; this

this is good, for by any such writing shall be intended the same or any such, and it may be by the deed, for, first it takes effect as a revocation, a limitation of new uses, and there are not more instances then one in it. See there *Leaper and VV Case*, cited 20. *El.* to prove, that powers where the interest of Strangers shall be changed, shall be taken strictly, as a power to make Leases for twenty one years, he cannot make a lease for twenty years, to commence in *Futuro*.

*The Bishop of Bathes Case, 3 Jacobi. Com.
Banco, fol. 34.*

THE B. 18 H. 8. Leaseth to E. and R. for years, proviso, if they dye within the term that the B. and his Successor shall reenter. E. dyeth, the B. dyes, the Successor Leases to C. *Cum post per mortem &c. prædict. acciderit vacare*, for years with confirmation. R. dyeth: *Resolv.* Every Lease ought to have a certain beginning, and continuance ought also to be certain, either by precise number of years, or by reference to an express certainty, or where a Lease may be reduced to certainty by matter, *Ex post facto*. Agreed, the second Lease vests presently in point of Interest, to take effect in possession of the end of the first Term if none of the accidents the first lease become void in the mean time, and then the Lease shall commence at the first accident which doth happen, and the Lessee hath no Election.

The Dean and Chapter of Worcesters Case, 3 Jacob.
fol. 37.

The D. and Ch. seised of a Mannor in Fee, in which were Copy-holds grantable for three lives, 8 s. 8 d. payable quarterly, and herriorable, and a Copy-hold for the Life of three, reserving the old rent half yearly, this is not void by 13 Eliz. c. 1. Resolved, the grant of a Copy-hold for the life of three is good, for although there may be an occupancy, yet it is not inconvenient, for an occupant shall be punished in waste. 2. Grant of a Copy-hold is a demise by the intent of the Statute, for in law, it is a Lease at Will. 3. The omission of Herriorable doth not make it void, because the annual rent is served. 4. It is sufficient that the yearly rent be served twice in the year, for the Statute saith, yearly, which maketh a difference between this case, and the Lord Mountjoyes Case, in the fifth Re-

Bellamy's Case, 3 Jacobi, Com. Banco, fo. 38.

Lease upon Condition, that the Lessee shall not alien without License, Assignee of the Lessee saith that the Assignment was with License, and showed not forth the Deed of License. 1. Because he did not claim by it. 2. Because the License was, *privilegium hominis*, and not *Ex institutione legis*. 3. Because it was executed and good.

Henry Finches Case, 3 Jacobi, Banco Regis, fo 39.

Grant of a Rent charge out of divers Mannors,
in the Parishes of E, and W, *ant alibi dictis*
S ma

256 Sir Anthony Myldmays Case. L
manerius spectant. and out of Lands, which is not parcel of any of the mannors, these are not charged with the distresse, for, *Alibi* doth not charge more Land than is parcel of those Mannors, but all parcels of the said Mannors out of the said Parishes.

Sir Anthony Mildmayes Case, 3 Jacob. Banco Regis, fol. 40.

1. **R**esolved, a perpetuity is against the rules and policy of the common Law. 2. It is impossible that an estate tail shall cease, before that Tenant in tail dyes without issue, and an estate cannot be made to continue as to one, and determine as to another except by Statute. 3. A gift in tail upon condition that he shall not suffer a common recovery, is void because he had Power by the Law. 4. It is a void saying, that his estate shall cease, if he goe abroad, for, *Non officit conatus nisi sequatur effectus*. Also many ambiguities will arise thereupon, because the Law doth not define it, and it is so uncertain, that it is traversable.

Blakes Case, 3 Jacobi, com. Banco, fo. 43.

An accord with satisfaction is a good barre to a Writ of Covenant, because the duty accrueth merely by the deed, but by a tort subsequent, together with the deed, will be a good barre in assumpsit; because this is founded upon the tort only, but upon the fact also. In all cases where an arbitrament is a good Plea, an accord with satisfaction is also, and so generally in all Actions where damages only are to be recovered.

Higgins Case, 3 Jacob. Com. Banco, fo. 44.

For a man have Judgement upon an Obligation, so long as this Judgement is in force, he may not have a new action upon the same Obligation. For, *inter reipublica ut sit finis litium & infinitum in judicio non probatur*. A Statute Staple is but an Obligation recorded, and one Obligation cannot drown another, although they be both for one Debt, and the Judge may chose upon whether he will bring his action. 11. H. 4. and 2. Jac. Sir William Cornwallis and Branthwaytes Case, and in every Judgment, the Defendant is amerced, and so he shall be amerced, *infinitum*.

Dowdales Case, 3 Jac. Com. Banco, fol. 46.

Debt against an Executor, the Defendant dead, fully administred, the Plaintiff saith, he had assets at E. the Jury found assets in Ire-

1. Resol. When the place is material the poynt cannot be found in another place. 2. Where place is named but for conformity, assets may be found in another County. 3. In a general issue, the Jury shall find all material local things in another County. 4. the jury by a mean shall try local in another County, as a release in a forrein, the Jurors shall assesse damages for the pro-
of the Land in the other County. *Multa contra per obliquum que non, &c.* but in case of felony the Tryal shall be whete the offence was done. 5. finding of assets is the substance, and that it is in is furpluage: A thing done beyond the Sea

shall be tryed here, if the foundation of the action
here.

Boswells Case, 3 Jac. Banco Regis, fol. 48.

IN a *Quare impedit*, judgment was given, to remove the incumbent of the Queen, not party to the Writ, who was presented, pending the Writ. Resolved That by the common Law, by admission and institution, the Usurper gains the inheritance of the parson, without regard of the nonage of the Patron, because he is in by judicial act, and the Bishop shall be supposed not to do wrong to the Patron, the incumbent shall not be disturbed to exercise his function, but the King shall have a *Quare impedit* by the common Law. Collation doth not put him out of possession, but he hath right to present, out of possession, but he shall have right to Collate it doth, an Infant by the Statute *2. c. 5.* shall have a *Quare impedit*, if a man takes possession upon an Infant who had a Mannor, to which, by descent, who at full age infeoffeth B. the Clerk voideth, &c. by the usurpation the infant was out of possession, and his right passed not, and seems the infant is without remedy: if a Clerk commeth in by course of Law, this gaineth not the inheritance against the right Patron, who was not party to the Writ. The King shall not recover damages by Statute, for he is not within the first branch, *Si prius semestre transferit*, nor within the second branch, for that depends upon the first, yet he shall recover damages. An incumbent shall not be moved if he be not named in the Writ, and if he be not admitted pending the Writ, and lapse shall not incur. If the Bishop be named in the Writ, otherwise if he be not: If he who is presented pending the Writ, be by rightfull Patron or not, yet he who recovers

Quare impedit, shall have a general Writ to the Bishop, which he must execute of necessity, and after that, the parties may try their titles as the Law shall determine.

Countess of Rutlands Case, in the Star-chamber,
3 Jacobi, fol 52.

That the person of a Countess or Baroness may not be arrested for Debt or Trespass, for although in respect of their Sex they may not sit in the Parliament, yet they are Peers of the Realm, and shall be tryed by their Peers, *Stat. 20 H. 6.* Peers of the Realm may not be sworn in any inquest; a Countess in marrying with a Husband, doth lose her Name of Countess.

If a Baroness, &c. by Mariage, marry again under Nobility, she loseth her dignity, but if she be Noble by birth or descent, yet whomsoever she Marry, she remaineth Noble; for Birth-right is Character *indelebilis*, and that which is gained by Mariage, may also be lost by Mariage.

A Sheriff ought not to dispute the Authority of Courts, but he ought to execute the Writs to him directed, for thereunto be they sworn. Serjeant at Law upon a *cap. ad satisfaciendum*, came to the said Countesse in *Cheapside*, being in her Coach, and touched her body with the Mace, and said, *I arrest Madam at the sute of S.* and those were all the words that were used, and thereupon compelled the Coach-man to carry her unto the Counter-gate in *Midstreet*, and the Sheriff took her into his house. In this Case it was resolved, that the Sheriff, Bayliff, &c. upon the Arrest ought to shew at whose sute, or of what Court, for what cause it is, and when the process is returnable, and that this general Arrest

of the Countesse cannot be said, that it was by force of the said Writ of Execution; and that this was of the Serjants own head, without warrant, against Law, and that the said Countess was falsely imprisoned, but she remained in the Sheriffs custody for 8. dayes, until she paid the Debt, but because the Arrest was by a feigned Action, entred in the Court, the Serjeants were sentenced.

The Lord Chandos Case, 4. Jacobi, fol. 55.

THe King grants to B. in tail, and in consideration of the surrender of the Letters Patents, by which whereof the King is seised in fee, granteth to him and his wife, and to the heirs of B. the reversion passing for the recital that the King was seised in fee, was the Collection of the King, and no part of the consideration or suggestion of the party; And when the King grants land in possession, if he had but a reversion, this shall passe, for he is not deceived, because less than he intended.

Bredimans Case, 4 Jacobi, Com. Banco, fol. 54.

A Man deviseth a rent for life out of a Mannor, and he deviseth the Mannor for years, the term enters, and pays the rent, after the Term, the donor brings an assize against the Terretenant. *Resol.* Judgment by lessee for years of the rent giveth none to have an assize. 1. In respect of the imbecility of his estate. 2. He cannot give seisin because he cannot seisin, and therefore a Præcipe lyeth not against him, because he cannot render seisin; but he may give seisin to the use of him in the freehold; A disseisor may give seisin of a rent secke, because he hath a freehold, and it is lawful. 3. A rent secke is *causa*

therefore it behoveth the first payment (which
 giveth life unto it) shall be made by a Tenant of the
 freehold, and in this case being created by devise, an
 Annuity lyeth not thereupon, othe rwise if it be by
 grant: and Tenant of the freehold ought to attorn
 a grant of such a rent over, therefore he shall give
 seisin: But seisin by a Bayliff is good, if seisin were
 had before within sixty years, and seisin given by
 Tenant at will is good, but it ought to be pleaded
 as payment by the lessor himself. If the King hath
 writ out of a ville to be payd by all the Inhabitants;
 seisin alleged in general, without naming any is
 good.

Gatewards Case, 4 Jac. in Com. Banco, fol. 59.

O claim common *ratione Commorantie & residen.*
in villa de B. is not good; for no man may have
 interest in common in respect of a Messuage, where-
 he hath no interest; For custome should alwayes
 extend to thar which hath certainty & contin uance,
 and without question tenant in fee simple ought to
 prescribe in his own name, and tenant for life or years
 by *Elegit* at will, &c. in the name of him that hath the
 fee, and he that hath no interest, cannot have any
 common, and none that hath any interest, although it
 be but at will, and ought to have common, but by
 pleading he may enjoy the same.

No improvement might be made in any wastes, if
 the custome (*viz.*) in respect of habitation and
 Commorance) should be allowed, for tenants for life
 years at will, by *Elegit*, by Statute, &c. of the
 wastes of the Lord, should have common in the wastes
 of the Lord, if this prescription were allowed, which
 were inconvenient: A Custome that every inhabitant
 of B. shall have away over such grounds, either to

the Church or Market, &c. it is a good custome, that is only easement, and no profit, and a way of passage may well *sequi personam*; The Lord cannot claim common in his own soyl.

A diversity was taken and agreed upon between a prescription and a custome, a prescription is always alleged in the person, and a custome ought always to be alleged in the Land, for every prescription ought to have by common intendment a lawfull commencement; but otherwise of a custome, for that ought to be reasonable; and *ex certa causa rationabilis iustata*, as Littleton saith; But it needeth not to have intendment of a lawfull commencement, as custome to have Land devisable, or of the nature of Gavelkind, or Borough-English. These and such like customes are reasonable, but by common intendment, these cannot have lawfull commencement, by grant, or act, or agreement, but only by Parliament; and the custome in the Case at bar was repugnant, for it was alleged that the Custome of the Town was, that every Inhabitant had used to have common within a place in the Town of H. which was another Town.

Catesbyes Case, 4 Jac. fol. 61.

Six months being half a year (*semestre*) is given to the Patron of an advowson to present, and according to the Kalender, and not after 28 days to a Month; and the Statute saith, *si tempus semestre non transierit adjudicentur damna ad valorem, &c. per dimidium anni*; and being ambiguous, it shall be construed for the benefit of the Patron.

Sir Moyle Finches Case, 4 Jac. Com. Banco, fo. 63.

THe Lady M. Tenant for life of the Mannor of B. the remainder in fee to the Lady Finch, she and her Husband and D. levied a fine to one of the demesns, who grants and renders to D. for 50 years, the reversion to S. and his Wife, and her heirs, with proviso in the Deeds which directed the fine that the Reversioner shall enter and hold Court; And it was averred that this was known by the name of the Mannor of B. D. maketh his Son of three years of age Executor, and administration was committed to R. T. S. and his wife levy a fine of all the Lands of the wife in K. except the Mannor of B. to the use of the Feme for life, the remainder to Sir M. F. R. T. demise to P. L. for ten years, Dame M. dyeth, P. L. entreth, by vertue of a power of revocation and limitation of new uses, S. with the assent of the Lady F. his wife, limiteth the uses to one who ousteth P. L. and maketh a Feoffment to the use of the Lady F. for life, the remainder to H. F. in tail, P. L. re-enters, Dame F. dyeth, H. F. for rent arrear distraineth.

1. *Resol.* By the grant and tender of the demesns the Mannor is destroyed, because in an instant the services and demesns are severed by act of the party; but otherwise it is, if by act in Law, as upon partition; so it is of an advowson appendent, &c. and upon partition many Mannors may be made of one, but not by the act of the party. 2. B. is excepted by the name of a Mannor, 1. Because the intent of the parties is so. 2. Exception of Misnomer shall not be favoured in Law. 3. It is sufficient in Law in many cases, that a thing be reputed as it is named, 4. If a remainder be limited to a Bastard by the name

name of sonne of J. S. and as to that was objected that this reputation is not time out of mind, needs not, if it be of convenient time as this was, it was a *Manner re vera* before to levy a fine, contriue the name after, so that this reputation stronger having such a ground, and reputation set veth in Writs amicable, although not in adversary.

3. The lease made by the Administrator *durum minori etate*, is good, because the administration general, and not special to the benefit of the infant, but howsoever this is good during the administration.

4. P. L. in the life of the Lady M. had but *interesse Termini*, and so that attornment cannot be in his life, but after the death of the La. Mo. by error of the lessee the reversion is in S. and his wife without attornment, because attornment needs not, because the reversion is settled, and he hath no means to compel, &c. otherwise it is where an attornment may be had: and although that P. L. lessee of a lease of part cannot make an expresse attornment, yet reentry shall be attornment in Law, so he who hath *interesse termini*, may make a surrender in Law, without expresse surrender, and a man of *non sane memoria* may make an attornment in Law, but not any expresse attornment.

The Lord Darcies Case, 4 Jacobi, Com. Banco, fol.

TENDER is not necessary to have the single value of the heir male or female; but the heir female shall not forfeit the double value, because the Statute of Merton is *si se maritaverit* at the age of 14. years &c. at which time the heir female is out of ward, and where by the Statute of *westmin. 1. cap. 22.* is provided that the Lord shall have two years to marry

Tender, it giveth not the double value, but if he
waive the two years, he shall have the value without
Tender; *quia de mero Jure, &c.*

Burrells Case, 5 Jac. Com. Banco, fol. 72.

If the father make a Lease by fraud and dyes, the
sonne sells the Land knowing or not knowing of it,
the vendee shall avoid it. 2. If the father makes a
lease to the sonne, who assigneth it over by fraud,
the father dyes, the sonne sells the land, the vendee
shall avoid it.

Sir Drue Druries Case, 5 Jac. Cur. Wardor. fol. 73

1. granted to the Town of Y. *Quod omnes de villa
mundi licet terras, &c. extra libertatem villa, &c.
conuerunt in Capite, se maritare possint juxta libertates
villa predicta*: R. D. dyed seised of a house parcel
of a Monasterie, dissolved in the time of H. 8. hold-
ing in capite, the King grants the wardship of his son
the Plaintiff, and makes the Ward Knight, the
Plaintiff brings a *valore Maritagii*.

The Charter doth not discharge the defendant;
Because it is *juxta libertates villa predicta*. and
the liberties are not shewed. 2. This Charter cannot
extend to a Tenure created in the time of H. 8. 3.
It is not shewed that the defendant was born with-
in the Town.

Resol. If the heir in Ward be made a Knight,
he is not out of Ward for his body, because by intend-
ment he is able to doe Knights service, otherwise if
he be a Nobleman.

1. By the death of the tenant the value of the ma-
nage is vested in the Lord, and cannot be deuested
to the Knighthood, &c.

3. If

3. If he be Knighted in the life of his Ancestors he shall not be in Ward at all.

4. If making of the heir in ward Knight shall de-
vest the value, it will be prejudicial to the Subject,
and to the King, for none will buy their wardships.

5. After Tender and refusal if the Heir be made
Knight, and marry, he shall not forfeit the double va-
lue, because he is out of Ward, but immediately the
Lord shall have a Writ *de valore maritagii*.

This was the last case that Sir John Popham Chief
Justice of England, &c. ever argued.

Sir George Cursons Case, 7 Jac. Cur. wardor. fol. 75.

Sir W. L. seised of a reversion expectant upon tail
(made to his son) of land in *Capite*, Covenant
to stand seised to the use of his neece, the son dyed,
the King shall not have premier seisin.

1. *Resol.* It was collusion apparent within the
Statute of *Marlebr. cap. 6.* to infeoff the Heir appa-
rent; and if he infeoff others upon Collusion aver-
rable, but no averment shall be where the remain-
der or reversion is left in a stranger, or upon a De-
vise.

2. Or otherwise to dispose in the Statute of
H. 8. have relation to Wills only, for before the Sta-
tute every man might dispose of his Lands by act ex-
ecuted.

3. The Clause in the said Statute which saveth pre-
mier seisin to the King, hath relation only to acts ex-
ecuted, for the King shall have without that premier
seisin of the third part not devised, but without
that he shall not have it of any part conveyed by
executed.

4. If the Grandfather convey Land to the son
living the father, this is out of the Statute, otherwise

If the father be dead : and so a gift to a Collateral Kinsman , who is not heir apparent, is out of the Statute, for none will (by intendment) dis-inherit his heir, to defeat the King of his Wardship , or primer seisin, and so is the experience of the Court of Wards.

Bullens Case, 5 Jacobi, Com. Banco, fol. 77.

THe Lord may have a certain sum *pro certo leta*, for it shall be intended it was granted at the first by purchase of the Leet for the ease of the Tenants, and in consideration of the Lords claiming of it at his own coasts every Eyr : the issue was, if the Plaintiff was a chief pledge, and by special verdict he was found a Resiant , and certified by the chief pledges to be a chief pledge , and was amerced for his default. It seemeth he was not, *sed materia predicta consopita fuit in arbitrio*. See 30 E. 3. 23. of frank pledges.

Lord Abergavencies Case, 5 Jacob. Com. Banco, fol. 78.

A Judgement in an action of Debt is had against a join-tenant for life, who afterwards releaseth to his companion all the right, &c. yet that moytie is liable to the Judgment, and so it is of a rent-charge during the life of the Releasor.

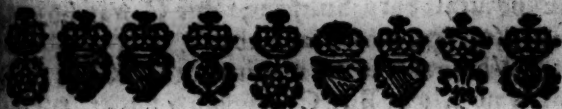
Sir Edward Phyttons Case, 5 Jacob. Com. Banco, fol. 79.

Executors may take benefit of the Kings generall pardon, by which is enacted that all subjects of the King, their Heirs, Successors, Executors and administrators, shall be acquitted and discharged of all offences, contempts, &c. and that shall be expounded

ed most beneficially for the Subject. And further
 doth give and grant all goods, Chattels, Debts
 forfeited; And prohibiteth any Clerk to make
 any Writ, &c. Provided that every Clerk
 make forth *cap. ut.* at the sute of the Plaintiff against
 persons outlawed, to the intent to compel them to
 answer; and that the party shall sue forth a *scir. fa.*
 before the pardon in that behalf shall be allowed;
 which is as much to say, having regard only to the
 Plaintiff; But in regard of the King, it is an absolute
 pardon, and grant of his goods, and he is a person im-
 pled against the King, but not against the party
 plaintiff. And every person by himself, or his Attor-
 ney, may plead this act for discharge: Executors shall
 have restitution upon the Statute 21. H. 8. Also Ad-
 ministrators shall have a Writ of error upon the Sta-
 tute 27. El. as was adjudged in the Lord Morda-
 nt's Case, 36. El. And yet these Statutes speak only
 of the party, and not of the Executors or Adminis-
 trators, and because no Writ can be against Executors,
 they may plead it without Proccesse.

The End of the Sixth Book

THE



THE SEVENTH BOOK.

Postnati.

Calvins Case, 6 Jacobi, Banco Regis, fol. I.



C. by his gardian bringeth an
assize, the defendants say, the
plaintiff ought not to be answer-
ed, *Quia est alienigena natus 50.*
Novembris Anno Domini Regis
Anglie, &c. tertio apud E. infra
regnum Scotie ac infra ligeanciam

Regis Regni sui S. ac extra ligeanciam Regni sui
&c. the Plaintiff demurreth.

The Case was Adjourned into the Exchequer
Chamber, and was argued by to Justices every day,
and by the Chancellour, and resolved by the Char-
cellour, and all the Justices (except *walmsley* and *For-*
) that the plaintiff ought to be answered.

For these six demonstrative Conclusions drawn
from the Law of nature, the Law of the Land, Rea-
sons of State, and Authorities of Record and Book

1. Every one that is an Alien by birth, may be, or
may have been an Enemy by accident; but C. could
never be an Enemy by any accident whatsoever;
no Alien by birth.

2. Whosoever are born under one natural lige-
ance, due by the Law of nature to one Sovereign,
are

are natural born Subjects; But C. was born under one, &c. *ergo*, a natural Subject.

3. Whosoever is born within the Kings protection, is no Alien; But C. was born under, &c. *ergo*, is no Alien.

4. Every stranger born, must at his birth be either *amicus* or *inimicus*; but C. at his birth could neither be *amicus*, nor *inimicus*, because he was *subditus*, *ergo*, no stranger born.

5. Whatsoever is due by the Law of man, may be altered; but natural leageance of the Subject to the Sovereign cannot be altered; *ergo*, not due by man's Law.

Lastly, whosoever at his birth cannot be an alien to the King of E. cannot be an alien to any of the Subjects of E. but C. at his birth could be no alien to the King of E. *Ergo*, he cannot be an alien to any of the Subjects of E. the Major and Minor both Propositiones perspicue *verae*, and although *Alienigena dicitur ab aliena Gente*: yet that is all one, as *Alienigena*, and arguments drawn from Etymologies are feeble, for *Sapenumero ubi proprietas verborum auditur sensus veritatis amittitur*, yet when they agree with Law, Judges may use them for ornament, and divers inconveniences would follow, if the Plea against the Plaintiff should be allowed: For first, it maketh leageance local, whereupon should follow first that leageance which is universal, should be confined within local limits. 2. That the Subject should not be bound to serve the King in Peace or in War out of those bounds. 3. It should illegitimize marriages which were born in Gascoyn, Guyen, Normandy, and divers others of his Majesties Dominions, where the same were in actual obedience. And lastly, this strange and new devised Plea inclineth too much countenance that dangerous and desperate error.

10.7. *Spencers (viz.)* That the Homage and Oath of fe-
 -reance, was more by reason of the Kings Crown, (that
 is, of his politique capacity) than by reason of the
 person of the King, which was condemned by two
 Parliaments, one in the Reign of E. 2. called *Exili-*
um Hugonis le Spencer; and the other in 1. E. 3. cap.
 1. No one Opinion in all our Books is against this
 judgement: The Lord Chancellour and twelve of the
 Judges, concurred in one opinion herein, and not in
 any remembrance so Honourable, and Intelligent an
 Auditory as was at this Case.

Bulwers Case, 27 Eliz. fol. 1.

H Recovered against the Plaintiff in the com-
 -mon place, and dyeth, the Defendant in the
 name of H. outlawed the Plaintiff, who brings an
 action of the Case in N. where the first Action was
 brought, and recovered, for there was the visible tor-
 -ture; when matter in one County dependeth upon
 matter in another County, the Plaintiff may choose
 in which County to bring his Action (except that
 the Defendant upon general issue pleaded, may be
 prejudiced of his Trial,) as if two conspire in one
 County, to Endite one in another County, and doe
 an Action may be brought in either, but if he be
 indicted, but not by them, there it it shall be brought
 where the conspiracy was. If Manasse be made in
 whereby my Tenants recede into L. an Action
 shall be brought in E. if an Action be founded upon
 two things; material and traversable in two several
 Counties, an action may be brought in any of them.
 An Annuity granted in one County to be paid in a-
 -nother, the Action shall be brought where the grant
 is, he who is robbed may have an appeal of felo-
 -ny in every County where the goods came, but o
 rob-

robbery where the fact was done only : A lease for years in one County, of Land in another, Debt shall be brought, where the lease was made, and waste where the Land lyeth; every Action which concerneth the life of a man shall be brought where the offence is committed : Every issue which ariseth upon an action in which Land shall be recovered, shall be brought where the Land lyeth, as in right of ward of Land or body, or intrusion of ward, and forfeiture of Mariage, and *Valore Maritagii*, and *Quare impedit* but ravishment of ward, where the ravishment was, and a *Quare non admittit* where the refusal was, before the Statute of 27. R. 2. c. 10. And Action for Land in diverse Counties, or for common in one County appendant to Land in another County, shall be brought by several Writs in both Counties, but now *In confinio comitatum* : a *per quæ servitia* shall be brought where the note of the fine is levied.

Sir Miles Corbets Case, 27 El. in Scaccario, fol. 5.

R Esol : That the special manner of Common in *Norfolk*: called *Shacke*, to be taken in arable land after harvest until sowing begin, is good. Resol. also if in D. there are fifty acres, and in S. 100 l. which ought to intercommon for vicinage, D. cannot put in more in their Common than it will depasture, and so to escape reciprocally, for the original cause of this Common was only to prevent suits in *Champion Countries*. —

*Cases upon the Statute of 13 E. 1.
of Winchester upon hue and cry.*

Sendills Case, 27 Eliz. in Com. Banco, fo. 6.

Robbery for which the Hundred must answer by force of the said Statute, is to be done openly so as the Country may take notice thereof themselves; but a Robbery done secretly in the house, the Country cannot take notice thereof: for every one may keep his house as strong as he will, at his will; for it was adjudged in *Ashpoles* case, that the party robbed, needed not to give notice thereof to the Country; for it may be that the party robbed was bound or maimed, &c. so as he could not make hue and cry to give notice. A robbery was done in January presently after the Sun setting during daylight; and it was adjudged, that the Hundred should answer for the same; for it was a convenient time for men to travel, or to be about their business. One was killed in the Evening and escaped, and by the common Law the Town was amerced, for that was accounted in Law parcel of the day, and not of the night. But by the Statute 27 *El. ca. 13*, none shall have action upon the said Statute, except the party robbed, so soon as he may, give notice of the robbery to any of the Inhabitants of any Village, Town, Hamlet, next to the place where the robbery was done, and if they in pursute apprehend any of the offenders, that will excuse the Town.

Milbornes Case, 29 Eliz. in Com Banco, fol. 6.

A Robbery was done in the Morning *ante lucem*, the Hundred shall not be charged, *Cum quis felonice occisus fuit per diem, nisi felo captus fuit tota villata illa amercietur.*

The Earl of Bedfords Case, 29 Eliz. fol. 7.

1. **R**esol. If tenant in tail make a voydable lease for years, and dyeth, his he'r in ward to the King, or other Lord, the Lord shall avoyd this lease; but if an Infant make a feoffment, the Lord by Escheat shall nor avoyd it, but a gardian shall, because he doth it in right of the Infant.

2. This avoydance is but during the interest of the Lord, for afterwards the heir may make it good. But if he who hath a particular estate avoydeth the act in all, after his Interest determined, it shall not be made good: as if a feme be indowed of an appropriation, and her Clerk inducted, the appropriation defeated for ever; so if a feme Covert (as a feme sole) levy a fine, and the Baron enters, and dyeth, the Conusee shall not have the land, for the estate wholly defeated.

Vghtreds Case, 33 Eliz. fol. 9.

THE M. of W. granted the Captainship of a Fort to the Plaintiff, and for exercising of the said office and for finding a Master Gunner, and six Soldiers, granted to him an Annuity of 32. li. per annum. The Plaintiff brings an Annuity.

1. Excepr. It doth not appear by the Case that the M. had power to grant this office, *Non aliter.*

2. T.

2. The Plaintiff doth not averre the exercising of the said office; *Non allocatur*, for if he had not used it, that shall come in on the other part, because this is a condition subsequent, and not precedent, but if one be to have a thing in consideration of an act to be done by him, there he must shew the performance, because that amounts to a condition precedent, as in debt for salary, but if each party had equal remedy, one for the money, and the other for the act to be done, there the Court shall be without shewing the performance, as if one Covenant to serve, &c. and the other Covenants to give money, &c. But although that an interest vested is to be divested by non feaseance, if it appear to the Court that an action is not maintainable without the doing of it, there the doing of it must be averred; as if an Abbot sole grants an annuity to J. S. *Pro Consilio*; &c. in action brought against the successor, he must averr that he had given Counsel, &c. to the use of the House, otherwise it against the grantor.

Englefields Case 34 Eliz. in Scaccario, fol. 11.

Sir F. E. covenanted to stand seised to the use of himself for life, the remainder to his Nephew, Proviso that it shall be voyd upon render of a Ring by him, after he was attainted of Treason, and all his inheritances forfeited by Statute; the Queen leaseh to the Defendant for forty years, by Statute it was enacted, that every one who had a patent of land of a person attainted, shall exhibit it into the Exchequer within two years to be inrolled, one authorized by Letters patents in the name of the Queen tenders the Ring in the life of Sir Fr. the Queen bringeth intrusion.

1. *Resol.* When the Q. tenant *per antor vie* leaseh

T 3

for

for years, this is good without recital of her estate, for it is lesse than her estate, as if she grant *Totum Patrimonium suum*, for there is no torte, and she is not deceived.

2. That this condition is given to the *Q.* but objected. 1. That it was inseperable from Sir *Fr.* for his intent was the substance of it, and his intent cannot be transferred over. 2. Natural affection is made the Judge whether the Nephew deserve that the use shall be revoked, and in so much that natural affection cannot be transferred, no more can this condition which was created by natural affection, and natural affection determineth the estate. 3. Although the benefit of this collateral condition be given to the *Q.* the performance is not: As to the first and second; It was answered, that the condition is only the substance, and all the residue is but a flourish, and that is not an inseperable condition, for any one may tender a Ring as well as he.

As to the third; The performance is given to the *Q.* as incident to the Condition,

4. It was objected, that the estate of Sir *Fr.* was not Subject to the condition, because he was not possessed by limitation of use, and by 27. *H. 8.* but he was seised of his ancient inheritance, *ergo*, the lease shall not be avoyded in the life of Sir *Fr.* It was answered, that Sir *Fr.* was seised by limitation of use, and that the lease shall be avoyded.

5. It was objected, that the *Q.* having made the lease, being seised *per auter vie*, by her own she shall not defeat it after; It was answered, that the *Q.* shall avoyd it, for her grant shall not inure to two intents; 1. to make the lease, &c. 2. to suspend the condition, and when the *Q.* had two rights, she shall not lose both without speciall words.

6. It was objected, that this tender ought to

found by office, because matter *in pais*, and if it be false the party hath no remedy, because the Certificate is not traversable; It was answered, that Certificates which inform the Q. of her title are traversable, but Certificates which are in nature of Trials are not; also by the Tender the uses are determined, and by the attainder, and the act of 33. H. 8. the land is vested in the Q.

It was objected, that the conveyance was void, because it was not inrolled within two years, as the Statute requires, and so Sir Fr. was seised in fee, and the lease unvoidable. It was answered, that it was tendered in the Exchequer to be inrolled within two years, which is all the Statute requireth; the forfeiture was established by a special act, 35. Eliz.

The Case of Swans, 34 Eliz. fol. 15.

A Game of Swans in a common River are seised into the Queens hands upon office found, I. Y. pleads that Abbas, &c. *gavisti fuerunt toto proficuo omnium cignorum in aestuaria prædict. nidificantium*, and makes her self title to them, & prayeth an ouster *Le maine*: All wild Swans in a common River who have gained their natural liberty, may be seised for the King, because they are *Volatilia regalia*, but a Subject may have them in his own River, and if they escape into a common River, he may take them again, upon fresh pursure, Cignets shall be divided between the owners of the Swans equally, but upon the Thames the owner of the Land shall have the third by the custom: whosoever hath a Swan-mark must have it by grant of the King, or prescription, and he may grant it over, and he ought to have freehold of five Marks *per annum*, by the Statute of 22. E. 4. c. 6. A man may prescribe to have wild Swans, but not

as here, but that the Abbot, &c. have used to take of them to their own use, and therefore adjudged against J. Y. A Swan may be an estray, and so cannot any other fowl.

Sir Thomas Cecils Case, 40 Eliz. in Scaccario, fol. 18.

Sir T. C. entred into an obligation to the Queen to perform Covenants, and shewed in the Exchequer Chamber matter of equity to discharge him of the said Debt, according to the Statute of 33. H. 8. c. 39.

1. Resol. that Branch of the Statute which giveth liberty to the Subject to plead matter in equity in barre of Debt due unto the King, extendeth to Debts due at the common Law, as well as by the Statute, because the Statute gives more speedy remedy for them, and so within the purview thereof, and so the other proviso of equal charging of Land Subject to Debts of the King is general.

2. The Court of Exchequer-Chamber in this case may decree upon English bill, although that Process be in the Exchequer at the Common Law, because to that purpose they are as one Court.

3. An Obligation to perform Covenants after Breach of them is within the Statute.

The Lord Andersons Case, 41 Eliz. in Scaccario, fo. 21.

Tenant in tail is bound by recognizance to J. S. who is attainted, Tenant in tail dyes, his issue aliens *Bona fide*, the King shall not extend these Lands by the Statute. 33. H. 8. c. 39.

1. Before that Statute the King could not extend Lands in the hands of the issue in tail, for the Debt

7. Lib. 7.

of his auncestor, because he was bound by W. 2. De-
Donis.

3. By that Statute Lands are extendable in the
lands of the issue in tail, for Debt due to the King
by Judgement, recognizance, obligation, or other
specialty, and other cases are out of the Statute.

4. The Alience *Bona fide* is not within the Statute,
because favoured as a purchaser, and he is a stranger
to the Debt, and comes in upon good consideration,
and benefit is given against the issue in tail, which
was not before.

5. Debts due to a Subject and forfeited to the
King, are not within the Statute, for they are not due
originally to the King by any of the said four wayes
mentioned in the act.

Butts Case, 42 Eliz. in Com. Banco, fo. 23.

1. Seised of black acre in fee, and of white acre for
years, grants a rent charge to B. for life, with
distresse in both, B. distreins, and avowes in white a-
cre, and good.

2. Resol. white acre is charged during the term
and life of B.

3. All the rent issueth out of black acre, for as an
estate of freehold it cannot issue out of whit acre,
nor as freehold out of black acre, and a chattel out
of white acre, because intire, it cannot be construed
to be two rents contrary to the intent of the parties,
and therefore an acceptance of a Leele of white acre
shall not suspend it, and in an assize black acre only
shall be put in view.

4. Although the rent issueth only out of black
acre, yet white acre is charged with a distresse. If
rent be granted out of three acres with clause of
distress in one, this is a rent seek for all, yet the gran-

tec

ree shall distrein in the third acre for it, so if a rent be granted to two with clause of distresse to one of them, but a rent may be seck, and charge at severall times, and therefore if a rent be granted in fee with distresse for life, it is a rent charge for life, and so after, but if the Clause of distresse be for years, it is a rent seck for all, because the freehold is seck.

The avowry was insufficient. 1. Because he pleaded the rent issued out of white acre, where it issued out of black acre, and although the Plaintiff had discovered the truth in his plea in barre, this doth not save the matter in substance vicious in the avowry. 2. Because he deriveth the rent out of white acre, *virtute cuius*, which was seised for life, which is repugnant to have a freehold out of a Charrel, and so judgement given against him for insufficient pleading.

Cases of Quare Impedit.

Halls Case, 31 Eliz. fo. 25.

A *Quare impedit* against the Bishop, and incumbent without naming the Patron, the Writ shall abate. 1. It is not reason the Patron shall lose his Patronage, without being named, in case where he may be named, as here. 2. The incumbent at the common Law could not plead to the Patronage, and therefore it is no reason that he who cannot plead be named, and he who can, omitted, but now the incumbent may plead to the Patronage by the Statute 25. E. 3. cap. 7. which enableth the possessor to counterplead the title of the King, and by equity against a common person, in the one case after induction in the other after institution: But in case where the Patronage shall not be recovered, or that the Patron

cannot be named, as in the Kings Case, a *Quare im-*
pedi shall be against the Incumbent sole, or against
 him and the ordinary, so if a Bishop disturb and die,
 shall be against the incumbent sole, if a Patron be
 named and dye, if the Writ shall not abate he shall
 be put out of possession, and if it shall abate, the tort shall
 not be punished, but if the Patron be put out of pos-
 session, he hath remedy by Writ of right, and it shall
 not abate, the Plaintiff is without remedy, therefore the
 Writ shall stand.

Sir Hugh Portmans Case, 40 Eliz. fo. 27.

If the Plaintiff in a *Quare impedit*, after appearance
 be non-sure, or discontinue, or be made a Knight
 ending the Writ, this is peremptory, because it is his
 own act, otherwise if the Writ abate for default of
 form, or by misnomer, for this may be the default of
 the Clerk.

Baskervills Case, 27 Eliz. fo. 28.

Title devolveth to the King to present by lapse, the
 Patron presents one who dyeth, the King hath
 the presentation, for he having the first presenta-
 tion, he shall not have the second: otherwise the
 King may suffer strangers to present one after ano-
 ther, and take his turn when he pleaseth, and by
 that means the Patron shall be in a manner disinhe-
 rited; and the statute of *Prærogativa Regis*, *nullum*
in curia Regis occurrit Regi, is to be intended when the King
 hath a permanent Title, and not transitory, when
 it is the substance of his Title.

Maunds Case, 43 Eliz. fo. 28.

IN case of a reentry for non-payment of rent, when any summe, *Nomine penæ*, is to be forfeited in both the cases demand ought to be made precisely on the day, a convenient time before the setting of the Sun, in the one case in respect of a condition and in the other in respect of the penalty; but in case of distresse, he that hath the rent may demand the same at what time pleaseth him, for no losse of penalty insueth thereupon, but only a remedy to come by his rent, and if demand be made any time after the day, and before the distresse, it sufficeth.

Discontinuance of Proccesse, &c. by the death of the Queen, Trin. 1. Jacobus, fol. 29.

VPon a general resummons, the original, and the issue are revived, and not the mean proccesse, nor Voucher, nor Garnishment, but all the Proccesse is revived upon a special resummons, but not in a prayer, for if a Verdict be given, and the King dyeth before the day in bank, because there summons byeth not, therefore he shall not have resummons, but in case of verdict, he for whom it is given may have his judgement upon *Scire facias*. But now, by the Statute of 1. E. 6. an action, sure, bill, or plaint shall not be discontinued, if they are returned, otherwise if not, because the Statute saith, Depending. If one deliver an appeal to the Sheriff within the year, and the King dyeth, for necessity the Plaintiff shall have a *Certiorari*, and reattachment: so if a for-

medon

medon be brought within a year against the pernor
of the profits; offices of Sheriffs, not being of in-
heritance or by Charrer, are determined by the death
of the King. Sutes depending in inferiour Courts
are out of the Statute; if the King dye after infor-
mation preferred by him, all the proceeding is lost,
but the information shall stand. 1. because this is
record for the King, which shall not abate. 2. Be-
cause informations upon certain Statutes are to be
preferred within certain time, but if the King bring
an original and dye, this is lost, if one plead to an In-
dictment, and the King dye, he shall plead *De novo*,
but if he be convicted, Judgement may be given in
the time of another King, by the said Statute, and
not before.

*Case of a Fine levyed by the King, tenant in tail, fo. 32.
Michaelmas, 2. Jacobi.*

A Fine levyed by the King, tenant in tail by gift
of his auncestor who was a subject, barreth the
tail. 1. It is reason, that as the King is bound by
the Statute of *w. 2. De donis*, that he should have be-
nefit of the Acts of 4. H. 7. & 32. H. 8. 2. A ge-
neral Statute bindeth the King of Lands descended
from an auncestor a Subject, but not where it des-
cends from an auncestor who was King, except in spe-
cial cases. 3. The issues of the King at the time of
the levying of the Fine are Subjects therefore within
the Statute, and it seem'd to them that there ought
to be Letters Patents to give power to the Conisee
to enter into the Land.

Nevills

Nevills Case, 2 Jacobi, fo. 33.

THe dignity of an Earl intailed is forfeitable for treason. 1. Resolved, this is within the Statute of *W. 2. De donis*, and experience is to give dignity in tail, with remainder over; also, this was an office anciently, and offices may be intailed. 2. A dignity may be forfeited at the common Law, by a condition in Law, for the Office of Earl was, *Ad conservandum Regem tempore pacis, & defendendum Regem tempore belli*; therefore he forfeits it when he takes Counsel, and arms against him. 3. If it were not forfeited by the common Law, yet it is by 26 H. 8. cap. 13. by this word *Hereditament*, and the words use of possession which are added, are to shew, that every Hereditament shall be forfeited: at the common Law, Donce in tail had *Potestatem alienandi post prolem suscitatum*, but if he retain the Land himself, he hath no absolute fee, for none shall inherit but the heirs *Per formam doni*, so it is now in case of annuity, and other things out of the statute.

Penall Statutes, 2 Ja. fo. 36.

When a Statute is made by Parliament the King cannot give the penalty, benefit or dispensation of the same to any Subject, but the King may make a *Non obstante*, to dispense with any particular person, that he shall not incur the penalty of a statute, and the King after a forfeiture or penalty of a Statute by judgement and recovery, may grant the same to any of his Subjects, by way of reward; and all the Judges of England subscribed to this, the 11th Day of November. 1604.

Lillingstones Case, 5 Jacobi, fo. 38

Thant in fee grants a rent charge, proviso, that the person of the grantor shall not be charged, the grantee acknowledge a recognizance according to H. 8. and after releaseth to the grantor, the Conisee sueth an extent, and brings debt against the grantor Terretenant. I Resolved, the rent is extendable, for notwithstanding the release it is *In esse* as to the Conisee, and cannot be discharged by the release of the Conisor, also, the extent relateth to the judgement, at which time it was extendable. See the Lord Aburgavenies Case, in the sixth Report. Debt lyeth not so long as the extent indureth, nor so long the rent hath continuance, although that by the release the free-hold be determined: if a rent charge be granted for life with proviso, as above said, the rent be determined, debt lyeth against the grantor, because he had no other remedy.

Bedels Case, 5 Jacobi, fo. 40.

O. B. Covenants in consideration of paternal love, &c. to stand seised to the use of himself for life, the remainder to his Wife for life, the remainder over. I. resolv. although the consideration in the deed runneth not to the Wife, yet another consideration may be averted, which stands with the Deed. The limitation of an use to the Wife importeth a consideration in it self so if it be to any of his blood, or if he covenant in consideration of a 100 l. to stand seised to the use of his Sonne, nothing passeth until Inrollment, *Quia expressum facit cessare tacitum.*

Beres-

Beresfords Case, 5 Jacobi, fo. 41.

AN use is limited to A. B. and of the heirs Male of the said A. lawfully begotten, this is fee tail, notwithstanding the words (of the body) be wanting, and that lawfully begotten, are implied, for no heir shall inherit who is not lawfully begotten. Resolved, that to create an inheritance the word Heirs is necessary, but the words *De corpore* are not necessary to make an estate tail, if there be words which Tantal mount, and here the sense according to the intent of the Donor, is of or by the said A. lawfully begotten. A gift to a man & *heredibus de se exeuntibus*, or *Hereditibus suis de prima uxore sua*, are estates tail.

Kenns Case, 4 Jacobi, fo. 42.

C. K. had issue by E. S. M. K. and they are divorced, and the Marriage sentenced void. C. K. marrieth F. they have issue E. K. C. dyeth. E. K. is found by office to be Heir, M. and W. her Baron preferr a Bill, in the Court of Wards to traverse the office, to which the Committees of the Wardship answer, one of the Committees dyeth, M. and W. sue a Bill of Reviver, and M. having issue E. dyeth, her issue, and R. her Baron, bring a new Bill of Reviver.

1. Resolved, so long as the sentence stands in force, the issue of the first feme is a Bastard, because the spiritual Judge hath jurisdiction thereof, and our Law giveth faith unto it: Sentence of divorce may be repealed after the death of the parties, but no divorce can be after their death, for that will Bastardise the issue, and the Court of the King hath the

all of it originally, not being hindred by any Sentence.

2. The Plaintiff shall not have a traverse without office found for her, for the King being sure of wardship shall not be ousted by one, before that he be sure to have benefit by him, and 2. E. 6. cap. 8. shall not extend to give a traverse without office, but by two offices two are found Heirs, whereof one within age, by that Statute the other may traverse immediately.

3. A bill of reviver upon a bill of reviver, shall not be suffered, for the infinitenesse, no more then a Writ of Journeys accompts. By all the last bill was abated, which prayeth that the first bill be revived, because M. was dead, but it ought to be that her Heir may traverse.

The End of the Seaventh Book,

V

THE

...the ... by ...

The ... have ...
... for the ...
... of ...
... of ...
... of ...
... of ...
... of ...

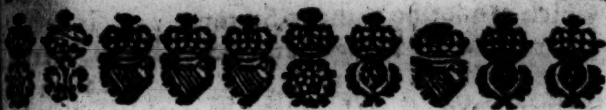
A ... upon a bill ...
... of ...
... of ...
... of ...
... of ...
... of ...
... of ...

THE ...

THE ...

THE ...

The
P
eads
Non
ade
Eli
an
e oth
n of
L.
n. F
ke o
tha l
thou
ake,
ng, a
rule
Th
e tha
The
Gift l



THE EIGHTH BOOK.

The Princes, Case, Jacobi in Chancery, fo. 1.



H E Queen, 37. *Eliz.* grants three Mannors, parcel of the Dutchie of C. to H. L. and G. M. the King (at the supplication of the Prince) brings a *Scire facias* against the said H. L. and S. H. to make Livery to

the Prince, by force of the Statute of 11. E. 3. H. L. reads *Null tiel recorde*, S. H. pleads the patents with *Non obstante* 32. H. 8. whereby these Mannors were made parcel of, &c. and the Act of Confirmation, *Eliz.* As to the plea of H. L. the Attourney sheweth an *Inspecimus*, and demurreth upon the plea of either two who joyn, and as *Amici curie* repeat of the Statute of 1. H. 7. touching the Dutchie, L. demurreth.

1. Resolv. the Charter of creation of the Prince, of C. 11. E. 3. is an Act of Parliament, for a limitation to the first begotten Son is voyd without Statute, for if Grandfather King, the Father be, and Son be, if the King dyes, the Father is King, and the Son Duke, by the said Statute, against the rules of Law.

2. The Lands cannot be so annexed to the Dutchie that they cannot be severed without Statute.

The estate is limited to cease when the King hath a first begotten Son, and to revive when he hath,

which cannot be without Statute. 4. It should be absurd, that six being then created Earls, that their creation should be firm, and the Creation of the Prince voyd.

5. In the Charter there is *De communi concilio Prelatorum, &c.* and in the end, *Per ipsum Regem & totum concilium in Parlamento*; such an Act as becometh *Rex Statuit*, and alwayes reputed for a Statute shall not be drawn in question, but if it be *Rex assensu*, the Commons or Lords omitting the other part, it is voyd, 2. The said Charter having the force of a Statute, is good, without ayd of any other Statute, and although the King in his *Scire facias* recite another Act for this surplus, the writ shall not abate, 3. The Prince had the Dukedome in Fee for it is an inheritance, because, 21. E. 3. 41. the Princess was indowed, and it is no estate tail because it is not limited of what body it shall come but only that they shall be Heirs to the said Prince. 4. Against a general Statute *Nul tiel corde* shall not be pleaded, for although it be lost, the Judges ought to take notice of it, and this is for an one which concerns the Prince, and the Statute of confirmations doth not extend unto it, 1. because this hath a special relation to certain defects as Misnosmer, &c. 2. Patents are made good against the King, saving the right of others, therefore the Princes right is saved: In a *Scire facias* the King or Prince may reply, but the most formal is, for the Attourney to reply, as here he did, Son of the King but his first begotten, the Duke of C. although he be Heir apparent to the Crown.

Calves Case, 26 Eliz. Banco Regis, fol. 32.

Resolved, that to maintain an action against an Inkeeper for goods lost, &c. it ought to be common Inne. 2. He ought to be a Passenger, therefore a Neighbour shall not. 3. An inholder shall not answer for any thing, but that which is *in hospitium*, therefore if a Passenger require that his horse be put to graffe, the inholder shall not answer if he be stolen, otherwise if he require it not. There ought to be a default in the inholder or his servants, therefore if a Guest bring one with him who stealeth the goods, the inholder shall not be charged; otherwise if the Hostler appoint one with him in his Chamber who doth it. But an Inholder shall not be charged, if he require the Guest to put his goods in a Chamber, and he leaves them in the court, but it is no excuse to the Inholder that he delivered the Key of the Chamber to the Guest, or that no goods were delivered to him. 5. The Hostler shall answer for Charters if they be stolen, but not if a Guest be beaten, and all this appares by the Writ, and the words of it.

Paynes Case, 29 Eliz. Com. Banco, fo. 34.

Feme, Tenant in tail, taketh Baron, and hath issue, who is heard to cry, and dyeth, the Feme with without issue, the Husband shall be Tenant by curtesie, for although the State of the Feme be determined, yet it is *Tacite*, implied in the gift, that every Husband of a Feme inheritable to the said estate, shall have the Land for his life, after the death of the Feme, if he be intitled to be Tenant by the curtesie. If a Feme be delivered of a Monster, this

doth not intitle the Husband to be Tenant by the curtesie, otherwise it is, if the issue had humane issue but is blemished: if a Feme be ripped, and the sue taken out of her Wombe, the Baron shall not be Tenant by the curtesie, otherwise it is, if the issue which they had dyes, and Lands descend after, the man shall not be Tenant by the curtesie, but when his issue may inherit as heir to the Feme, therefore he shall not be of a possession in Law, because the issue makes title from the ancestor of the Feme, and not from the Feme.

Barretry 30 Eliz. fol. 36.

A Common Barretor is a common maintainer of Sutes or quarrels, in Courts, or in the Country. As first in disturbance of the peace. Secondly, in taking and keeping of possession, with force or deceit. Thirdly, by false calumniation and sowing of Quarrels, but to indite him of it, it ought not to be, that he hath done so twice or thrice, but that he is a common doer of them.

Griestlies Case, 30 Eliz. Com. Banco, fo. 38.

BY the custome, one is chosen in a Leete to be Constable, who refuseth, and departeth our of the Court, the Steward imposeth a Fine of 5 *l.* upon him, for which the Bailiffs of the Lord distrein, and he brings a replevin.

1. Resolved, every Judge of record may assess a reasonable fine upon any man who makes contempt or disturbance to the Court, but a Judge who is not of record, cannot.

2. This fine needs not to be assayed, because the Statute of Mag. Ch. speaks of Amerciements,

of Fines, for a fine is imposed by the Court, and Amerciament by the Jury : therefore the Judge in an Amerciament is general, *Quod sit in misericordia*, and after upon esteits directed to the Court they are afferred, and the Statute is, that a noble man shall be Amerced by his Peers, which is used at this day, because it is reduced to a certainty, (*viz.*) A Duke to 10 *l.* and another to 5 *l.* an Amerciament of an Officer of the Court, or who hath execution of Writs shall be afferred by the Court, so of any who is Judge as Suters : If a juror appear, and is adjourned to a day, of which he makes default, this shall be inquired by his Companions, for he shall be fined to the value of his Land, *quod nemo*, which the Court cannot know.

3. A distresse may be taken for a fine without cause, or for an Amerciament which is lesse.

Whittinghams Case, 45 Eliz. fol. 42.

It was resolved, that if there be Lord and Tenant an Infant, and the Infant make a feoffment in land, and execute the same by livery of seisin by his hands, and after dye without heirs, in this case the Lord shall not have the benefit of the escheat, and the feoffment is unavoydable.

There be three manner of privities, (*Viz.*) Privity in blood. 2. Privity in estate. 3. Privity in Law. Privities in blood, as heirs in blood, Privity in estate, as Tenants, Baron and Eeme, Donor and Donee, and Lessee, &c. Privities in Law, as Lord by tenant, Lord of a Villain, &c.

If a Lessee for life make a Lease for years, and after enter into the Land, and make waste, and the Lessee recover in an action of waste against the Lessee for waste, he shall avoid the Lease for years, made before

the waste committed. But if a Lessee for life make a Lease for years, and after enter and make a feoffment in fee, the Lessor shall not avoid the Lease for years; and so if a Tenant make a Lease for years, and after is attainted of felony, or dieth without heir, the Lord by escheat shall not avoid the term. But because the feoffment in the case in barr was executed by Letter of Attourney, it was resolved to be void, and the Land escheated to the Queen.

Jehu webbs Case, 6 Jacobi, Com. Banco, fo. 45.

THe King grants the office of the Kings Tennis plaies at W. to one, who being disseised brings an assize.

The Patent shall have a reasonable construction, not only when the King himself plaies, but when any of his Houshold. As if a Commission be made to take Singing-Boys in a Cathedral Church for the Kings Chapel, those that Sing there for their pleasure, cannot be taken, but such as get their living by it. There were but two manner of assizes at the common Law, assizes *De libero tenemento*, and *De communia pasture*, but for no other common, but for this only there is a Writ in the Register. But the Statute of W. 2. c. 25. giveth it, *De proficua in loco capienda*, in lieu of a *Quod permittat*, and although that these offices amongst other things are named, yet an assize lay of an office at the common Law, although that no Tenant for life may have a *Quod permittat*, yet an assize did lye for him, but that it be understood of an office of profit, for it lyeth not of an office of charge: Original Writs made by Statute cannot be altered without Statute: In an assize of a new office, it ought to be shewed, what

to it, but not for an ancient office, because it is sufficiently known.

Syme Case, 6 Jacobi, fol. 51.

Tenant in tail levyeth a fine with warranty, and dyeth, the warranty descends upon the issue of him in the remainder, inheritable to the tail, and another, the issue in tail brings a Formedon, and is barred for all, for the warranty is intire, and barreth every one upon whom it descends, of all his right: if one seised of three acres maketh a feoffment of one with warranty, and dyes, having issue two Daughters who make partition, the Mother purchases the part of one, & brings dower against the feoffee who Vouches the Daughters, she shall recover all the other acre of the other daughter, if Tenant by the curtilie make a feoffment with warranty, and dyes, and his Son heir of the Feme recovers, and assents descends after, the feoffee shall have a *Scire facias*, to have the Land first recovered, by the Statute of Glouc. c. 3. But if assents descend to the Heir in tail, bound with a lineal warrenty, after recovery in formedon, the Feoffee shall have a *Scire facias*, to have the assents, for otherwise if the recoverer alien the assents, the issue of him will recover the Land in tail again; but in the cases the discontinuances ought to confesse the title of the Demandant, and pray, that the assents descend after, they may descend unto him, so if he plead a warranty and assents, this is peremptory unto him, if it be found that assents did not descend: for the Statute is, that a *Scire facias* shall issue out of the rolls of the Justices, and in this case there is no ground for the *Scire facias* in the record, but in this case if the issue in tail pleads no assents, and assents are found, but not to the value, the Tenant shall have

have a *Scire facias* to recover the assers descended in
ter, for that false plea of the Vouchee. Warranty
and estoppel descend upon the Heir general, and
warranty barreth although that he upon whom it
descends, claimeth not by him that made it, but so
dorth not an estoppel, but estoppels with recon-
pence bind the right of one who claimeth not by him
that made it.

Roger, Earl of Rutlands Case, 6 Jacobi, fo. 55.

THe King grants the pannage and herbage of a
Park to M. for life, and reciting this, grants it to
the Earl of Rutland for his life.

1. Resolved, the King hath three manner of inhe-
ritances. 1. Some which he cannot exercise him-
self, and cannot grant them in reversion or remain-
der, as Corodies and Churches of which he is Pa-
tron. 2. Others which he cannot exercise himself,
but may grant them in reversion or remainder, as of-
fices. 3. Others which he may exercise himself, and
may grant, as Lands, Houses, &c.

2. The King here is not deceived, for when he
reciteth here that M. had for life, and grants for life,
this inureth, as by Law it may, that is as a grant in
reversion.

3. In this case the grant to the Earl shall com-
mence after the determination of the estate of M.
and if the King grants Land to one and his Heirs,
Habendum to him and his Assigns, it is good, and the
Habendum shall be rejected for the honour of the
King. See the Lord Chandos case in the sixth Book,
and when a Charter of the King may be taken to two
intents good, in many cases it shall be taken to such
intent as is most beneficial for the King, but if it
may be taken to one intent good, and to another
void,

void, then for the honour of the King, and benefit of the Subject, then it shall be taken so that it may take effect.

Beechers Case, 6 Jacobi, fo. 58.

P. Plaintiff in Debt, *Se retraxit* by attorney, and by the judgement is not amerced, he brings error. 1. Resolved, a *Retraxit* ought to be in proper person, for at the common Law every one who appeared ought to come in proper person and make his attorney after, by license of the Court, but if it be without writ, he cannot without a writ of *Attornatus faciendo*: In cases where one may make an attorney, but for contempt is bound to appear in person, if he appear by attorney, this is not error, because the Court may dispense with the contempt, otherwise where he cannot appear by Law by attorney, as here, for if it appear by attorney, this is error. 2. B. ought to be amerced if upon a Nonsure, *à fortiori* upon a *Retraxit*, and although it is for his advantage, yet he may assigne it for error, because the judgement is not perfect, and because it is for the advantage of the King, and it shall not be amended because the act of the Court. 3. Where one disclaims he shall not have a Writ of error, because he hath confessed that he had no right, otherwise it is upon a *Retraxit*, for this is but a barr of the action, *à fortiori* here, where it was void, done by an attorney, a *Retraxit* ought to be when the party is supposed to be present, therefore it shall not be when he imparleth.

Swanys

Swaynes Case, 6 Jac. fol. 63.

1. **R**esolved, the King grants a Mannor for life except Timber Trees, the Lessees grant copyhold, the Grantees may shrowd Timber Trees because they come in by custome, *Paramount* the exception. 2. If Copyholders prescribe to take profit in any part of the Mannor, if the Lord aliens it, a Copy-holder admitted after shall have it, because he is in paramount the severance, but he shall prescribe and plead specially, that is, until such a time, (*viz.*) Before the severance *Talis habebatur, &c. consuetudo, &c.* and then shew a severance.

Sir William Fosters Case, 6 Jac. fol. 64.

C. F. made a feoffment 4. E. 6. reserving a rent charge, which rent descends to T. F. who dies intestate, his Administrators avow for it, and alledge no seisin within 40. years, yet good, for the Statute of 32. H. 8. c. 3. that none shall avow for rent if he had not seisin within 40. years, is to be intended when it was necessary to alledge, as upon rent betwixt my Lord and Tenant, for this may be had by incroachment, and perhaps the commencement of the Seigniorie was before time of memory, but where rent is by deed or reservation, as here, or upon an estate tail, the seisin is not material, for the deed or reservation is the Title and incroachment shall not hurr, and they shall not have a *Ne injuste vexat*, but shall avoyd it in an avowry, and *Magna charta, c. 10. Quod nullus distringatur ad faciendum majus servitium, &c.* doth not extend to donee in tail, Lessee for life, &c. but is intended between very Lord and very Tenant,

Lovedayes

Lovedays Case, 6 Jac. fo. 65.

A Jury who appeareth to try a certain issue, give a verdict which is accepted, be it perfect or imperfect, they are discharged, and shall not try the same issue, upon a new *Nisi prius*, but a *Venire facias* *de novo* shall issue, otherwise it is of the Recognitors of an assize, they shall try all the issue, because they are not to try any certain issue, and because they come in upon an Original, the Court will not award a new Original, but the Plaintiff shall have a Certificate of assize to try the imperfections, the Plaintiff seeth a *Venire facias* against diverse, the Sheriff returneth no Writ, the Plaintiff shall not have severall *Venire facias* after, for he cannot vary from the first.

Crogrates Case, 6 Jacobi, fol. 66.

The Defendant pleads in barr to trespassse that the B. of N. leased by Copy to W. M. to which Copyhold there is common in B. and justifieth as servant to the said W. the Plaintiff replies, *De injuria sua propria, &c.* this is an insufficient replication, for, *De injuria &c.* hath reference to all the plea in barr, and not to the commandement, *Ergo*, if the Defendant in false Imprisonment justifie, for that a *Capias* was awarded to the Sheriff, who made a warrant to him to take the Plaintiff, *De injuria, &c.* is no plea, because it referreth to all, and so Record shall be tried by jury, but he shall traverse the Warrant, which is matter in fact, but this had been a good plea, if the proceeding be in a court, which is not of Record. 2. *De injuria, &c.* is to be pleaded, where the plea is matter of excuse, and not where he claims

an interest in his own right, or in the right of his Master, for there he shall traverse the Commandment. 3. Where authority is derived from the Plaintiff himself, or is given by Law, as to see if waite the Plaintiff ought to answer to it, although no interest be claimed, and he shall not plead *De injuria* &c. 4. if this plea be admitted here, all parts of the plea in barr shall be tryed, and the issue will be full of multiplicity.

Trollops Case, 6 Jacobi, fo. 68.

THE Defendant in error pleads excommunication, &c. and sheweth the Certificat of the Vicar general, *de D.* the words which were, *Universis clericis & literatis per totum diocesim D.* the plaintiff pleads the general pardon 3. *Jac.*

1. Resolved, the official cannot certifie excommunication, for none shall doe that, but he to whom the Court may Write to assoil the party, as the Bishop and Chancellour of C. or O. and for that, if a Bishop certifie and dye before the return of the Writ, it shall not be received, but the Successor shall doe it, and one Bishop shall not certifie an Excommunication made by a Bishop in another Court, but a Bishop after Election before Consecration may, and so may the Vicar general, if it appear that the Bishop is in *Remotis agendis*. 2. The Certificat is insufficient, because by the particular direction to the Clerks of D. the Kings Court and all others are excluded, and so a protection in one Court serveth not in another, and excommunication is such a thing, as the Court of the King hath conuance, and therefore the Sure and the Cause are to be expressed in the Certificat, that the Kings Court may judge of the sufficiency, and if it be insufficient (as if a Bishop cer-

...the an excommunication made by himselfe in
his own Cause) the Court may write to absolve
him. If the Certificat had been good , the point
is, whether the general pardon dischargeth an ex-
communication or not.

whitlocks Case, 6 Jacobi, fol. 69

A Reversioner upon an estate for life levyes a fine
to the use of himself , until Mariage of his Son,
and then to the use of himself for life , with power
to make Leases , so that they exceed not 21. years,
or three lives, reserving the ancient rent, the remain-
der to his Son in fee , the Son is married , the Fa-
ther maketh a Lease for 99. years, if two shall so long
live, reserving rent to him, his heirs, and the rever-
sioners, this is a good Lease.

1. Resolved, he had pursued his authority, for if
he had a particular power to make Leases for 21.
years, or three lives , he cannot make Leases deter-
minable upon lives , but having a general power to
make Leases, so that they doe not exceed 21. years,
or three lives, he may.

2. The rent reserved goeth to the Son , although
that he who reserved it had but for life, because the
Lease for years hath no being out of the Lease for
life, but out of the Fee, and in judgement of Law
proceedeth both in construction upon the limitation
of uses , but the most safe way here had been
to reserve the rent generally, and left it to the distri-
bution of the Law.

Greenelyes Case, 7 Jacobi, fol 71.

B Aron and Feme, Tenants in special rail, the Ba-
ron infeoffeth P. G. and dyeth, the Feme dyes,
the

the sonne enters, and leaseth to the Plaintiff.

1. Resolved, if Baron jointenant in special tail with his Wife, had made a feoffment, or had been disseised, at the common ley, and dyed, and the Feme before entry dyed, this is a discontinuance to the Son, because he cannot enter as Heir to both, but if the Feme enter, the discontinuance is purged.

2. The estate which the Feme had jointly with her Baron is within the purview of the Statute of 32. H. 8. c. 10. That no fine levied by the Baron sole of Lands of the Feme shall hurt her, and within the Statute of West. 2. c. 3.

3. The entry of the son is lawful, although he claimes not as Heir to the Feme, as the Statute speaks, but as heir to both, because he is within these words, or to such as have right by the death of such Wife, and this is to be intended of discontinuances made by the Baron, and not of a rightful bar of the issue, for they cannot avoyd it, and the Statute is that they may enter, which they cannot do where they are barred: and if the Feme enter within 5. years, as she may after a Fine levied by the Baron, this doth not take away the future bar of the issue, and if she enters not within 5. years, she also is barred: Baron, tenant in tail, the remainder to the Feme in tail, makes a feoffment, the Feme may enter after his death, by this Statute, but if the Baron suffer a recovery she shall not enter, in the Case at barr the son may have a *Formedon* at the common Law, and where before this Statute a *Curia vita*, or *Sur cur in vita* did lye, entry is given by the Statute, and not otherwise.

The Lord Staffords Case, 7 Jac. fo. 73.

The Queen reversioner upon an estate tail grants the reversion to T. T. in tail upon condition, to have *Predictam reversionem* in fee, the condition performed, the Lord Stafford Tenant in tail levying a fine, his issue is barred. 1. Resolved, that a condition of accruer may be annexed to a thing which lyeth in grant, and to an estate tail, as if Lessee for life be the remainder for life, with condition of accruer to the first, this is good, and yet no Merger of estate. 4. things are requisite to an accruer. 1. A particular estate as the Foundation, *Ergo*, a Lease at will shall not be. 2. The estate ought to continue in the grantee until accruer, therefore if the Grantee alien and purchase, the condition is Tolved, but *Quere* if the Tenant alien upon condition which is broken, the fee shall accrew, but grantee may grant part of the estate, as if Lessee for life make a Lease for years, so may Tenant perform the condition after, so may Tenant special tail, after he is become tenant in tail at possibility, &c. so may the surviving jointenant or the heir of Tenant in tail. An instant is sufficient to support an accruer, as if the condition be, if Lessee be ousted *Eo instante*, that the ouster is the accruer, but if Lessee for years accept a confirmation for life, the condition is gone: but it is not necessary, that the estate of the Grantor or Lessor continue, because by his own act he shall not defeat himself. 2. It ought to vest at the time of the condition performed or never, and for that, rather that it shall not vest at this time by performance of the condition, the fee without office or other ceremonies be devested out of the King. 4. It is necessary that the particular estate and the condition because the

deed, or two deeds delivered at the same time, in Law they are but one grant, and by the condition performed, he had fee from the delivery.

Resolved, *predict. reversionem* signifies the reversion which the Queen had, *Viz.* That which depends upon both the estate tail, and so was the rent; also she granted, *Omnia premissa*, which made it clear. Resolved also, that these words Will Declare, doe amount to a grant, and are so used in Patents of Liberties, and things to take effect in *tail.* Tenant in tail the remainder in tail, the remainder to the King, Tenant in tail suffers a reversion, this doth not barr the remainder in tail, because the issue in tail is not barred, and therefore reversions and remainders in tail are preserved by the Statute of 34. H. 8. c. 20.

Lastly, Resolved, if the reversion in fee had remained in the Crown, that the fine levied by Lord Stafford the Father, had not barred the Land that now is. *Notlyes Case, 31 Eliz. Com. Banco.*

What Wields Case, 7 Jacobi, fol. 78.

W. W. seised of Land, to which he had common appurtenant, aliens 5. acres to one who is plevin counts, that he and those, whose estate he is in the said 5. acres, have had common there, and good. 1. Resolved, although by purchase of the Land in which, &c. the common appurtenant is destroyed in all, yet it is not so by alienation of part of the Land to which but all remains with damage to the tenant of the Land, 2. That the pleading of it was sufficient.

Vinyors Case, 7 Jacobi, fol. 80.

Ne was bound to stand to the award of W. R. and revokes the submission, the Obligee brings
 1. Resolved, the Countermund is good, for authority Countermundable by the Law, cannot any way bee made irrevocable. 2. Although the Plainriff doth not show, that the Defendant had given notice to the arbitrator, yet it is good, because this is implied, for without notice the revocation is voyd. 3. The Obligation by the Countermund is forfeited, because he doth not stand to, when he Countermunds it. 1. By his own he had made the condition impossible, *Ergo*, the Obligation is single, if one bindes himself to give license to carry Wood, &c. for a certain time, if he revokes it, and disturbs him, the Obligation is forfeited.

Sir Richard Pexhalls Case, 7 Jac. fol. 83.

R. P. seised of Lands, part whereof is holden in capite, deviseth 100. Sheep, 10. Bullocks, and 10. quarters, to one with clause of distress; and the grantee shall hold his Courts for his life, for arrears for two years, the grantee avoweth. 1. Resolved, a devise of rent out of all is good, and ratifies effect out of two parts, and as to the third is void. 2. The grantee shall have an estate for life in the land, and so he shall if it be granted by deed, also by assent of the Devisor it appears, that the Grantee shall hold Courts, and have 10 *l. per annum*, for wages, and quarterly here had relation to rent on, because the word *Et*, disjoyneth it from Sheep and Bullocks, and judgement given for the Avowant.

Buckmers Case, 7 Jac. fol. 86.

T. B. gave a House in Gavelkind to M. his Eldest Daughter in tail, the remainder of one Moir to J. a second Daughter in tail, the remainder of another Moir to K. a third Daughter in tail, with the cross remainders to J. and K. M. discontinueth and dyeth without issue, J. dyeth without issue, K. dyeth, and her issue brings a Formedon in the remainder, and good, although several remainders, they depend upon one estate, and commence by writ at one time: In actions real, in which title is pressed, a man shall not have one Writ for Lands which he had several Titles, as in escheat, cessive Writ of Mesne, &c. but he may have a writ of Writ of Land only, although it be by several Tenures, nor one Formedon upon two distinct gifts, where the foundation is several, but he shall have it if there be one gift, although it take effect at several times, because the foundation was joint and single, as upon a gift in tail, to Brother and Sister, who dye without issue, or if the Brother dye without issue, and the Sister dye having issue, who dyes without issue, to whom the remainder limited shall have one Formedon, although it vests at several times, so in estate tail to Father and Son, and so here: In actions real, founded upon Torte, a man shall have one Writ to recover Lands, to which he had several Titles, as in an assize, a Writ of entry, &c. but in a writ of entry upon disseisin made to my Mother, and my Sister Coperceners, because there title is in the writ it appeareth he ought to have several actions; but in personal actions, one may comprehend several torts, and causes of actions, as trespass for trespass made at several dayes and places, waste upon several

Leases

cases, and so of Debr. *Nota*, if a remainder be executed, issue in remainder shall not have a formedon in remainder, but in the descender, and Count of an immediate gift, but if there be a Lease for life to one, the remainder in tail to A. the remainder in tail to A. dyes without issue, if B. be chased to his former, he shall not count of an immediate remainder, but shall shew the first remainder to A. and that he is dead without issue. 2. In formedon in the remainder reverter, omission of issue inheritable in the person of the demandant, abates the Writ, but not upon the part of the particular Tenant. 3. The demandant must make mention of the Son who survived the Father, to which Son the Land descended, but not seised by force of the tail, but he shall name the Son, but not heir. 4. The Demandant in a formedon in the descender must make himself heir to that which was last seised, and he to the Donee. Note that because K. was never seised, the Writ shall say *manere*, not *descendere*, and the Writ was, *Remansit*, because a discontinuance, otherwise it should be *revertenda remanserunt*.

Fraunces Case, 7 Jac. fol. 89.

The Plaintiff pleads in barr of avowry, that R. F. devised to I. his Son, who leased to him, the avowant replieth, that after the devise, R. F. made a settlement to the use of the said I. upon condition, that he shall suffer his Executors to take away his goods, and the estate limited to him was for sixty years, if he should to long live, with diverse remainders over, and that after the death of F. I. hindered his Executors, to carry away the goods, whereupon a remainder entred, and judgement given for the Plaintiff.

1. Resolv. although the condition be taken strictly, the uses to I. only, and to his heirs, are only avoided by it. 2. A disturbance by parol is no Breach of the condition, and because the avowant did not shew a special disturbance, his replication was voyd. 3. I. ought to have notice of the condition being Stranger to it, or otherwise he cannot break it, and a Copy-holder shall not forfeit for denial of rent to him to whose use a Mannor is transferred before notice, but he who bindes himself to doe any thing must take notice at his peril, because he hath taken it upon him. 4. Although that the Title which the Plaintiff had made in barr to the avowry, be destroyed, yet he shall have judgement, because his count is good, and another Title (that is, to have the Land for sixty years, by force of the uses declared upon the feoffment) is given unto him by the Replication, although that the Title which he made for himself be destroyed, yet the Court must adjudge upon all the record, and judgement was entred for him accordingly.

Edward Foxes Case, 7 Jacobi, fol. 93.

A Reversioner upon a Lease for life, the remainder for life in consideration of 50 l. demised, Granteth, &c. his reversion for 99. years, tendering rent, this is a bargain and sale, and there needs no attornment, for the words of bargain and sale are not necessary, if there are words which ran amount as if at the common Law one had sold his Land, and use had been raised to the Vendee, because their intent so appeared, so here; but if it appear, that the intent was to passe it at the common Law, as if a Letter of Attorney be made to make livery, the use is not risen, and here appeareth their intent to passe

a bargain and sale, because rent is reserved presently, therefore it is reason that he shall have the years of the particular Tenants presently, which cannot be if it passe not by bargain and sale, and inrollment is not necessary, because a term for yeares only passeth in this case, and no freehold. See Sir Rowland Heywards Case, 2. Report to. 35.

Mathew Mannings Case, 7 Jac. 10. 94.

Essee for yeares is bound in 200. Markes to W. C. and deviseth to his Wife for life, and after her death to M. M. and makes his Wife Executrix, who agrees and dyeth intestate. M. M. enters, and takes administration of the goods, not administered, W. C. brings Debt against him. Resolved, that M. M. takes by Executory devise, and not as a remainder, and the estate limited to him in construction, preceedeth the limitation to the Wife, as if he had devised, that if the wife dye within the term, that then M. M. shall have the residue, and also devised it to his Wife for life. 2. This case is most strong, because a Chattel which may vest and revert at pleasure of the Devisor, without mischief to the *Præcipe*. 3. A devise of the Term, and Occupation thereof, all one. (*Viz.*) So many yeares as the Feme shall live, the remainder to M. M. 4. After the Executrix had agreed, the first devisee cannot take the Executory devise. 5. A man may devise real estate, which he cannot convey by act executed as to his Executors, until his Debts shall be paid, the remainder over, they have a Chattel determinable upon payment of the Debts, which cannot be at the common Law. If a Sheriff sell a Term upon *Fieri Facias*, and judgment is reversed, the sale shall stand, otherwise none will buy any thing upon Execution.

cution, and Judgement was given for the Plaintiff, and affirmed in Error.

Bashpoles Case, 7. Jac. fo. 97.

F And B. put themselves in Arbitrament for all demands, Sutes, so as the aforesaid award be delivered in writing, &c. at the feast of Saint James, the Arbitrator awards that B. shall pay 22 l. to F. B. refuseth to pay, F. brings Debt upon the bond to stand to the award, and good: 1. Resolved, that the award was of both parts, for the one was to pay money, and the other to discharge the Debt. 2. Resolved, that whereas the Plaintiff saith, that the award was made *De præmissis*, which until the contrary be shewed shall be intended of all: when the submission is general an award of part is good, for otherwise the parties may conceal one thing and make the award void: but if it be of diverse things in special, *ita quod arbitrium fiat de præmissis*, an award of part is void, but good without such conclusion, so if two of one part, and one of the other part, submit themselves, arbitrament between one of the one part, and another of the other part is good.

Sir Richard Letchfords Case, fo. 99.

TENANT by Copy in fee, (where there is a custom that the heir after the death of his aunccestor within three Courts and Proclamations made, shall be barred if he claimed not) dyes, his heir beyond the Seas until three Courts and Proclamation passed and returns, and claimeth to be admitted, he is not barred no more than by Non-claim upon a fine. *Ergo*, this custome shall be construed, if he be within the realm of full age, &c. but if he go over the Sea

after the death of his auncestor, he shall be barred, in case of a fine. 2. Resolved, although he was not in the Kings service, this is not to the purpose, because by intendment he cannot have notice; But a *Mulier puisne*, over the Seas shall be barred, by the dying, seisen of the Bastard *Eigne*, for the right of the *Mulier* is barred, and the Bastard is made *Mulier*, although that a descent of the disseisor of a rent or thing which lyeth in grant barreth nor the disseisee, yet if a Bastard *eigne*, dye seised of it, this barrs the *Mulier*. If two Daughters, whereof one is a Bastard *eigne*, enters and dyes, before or after partition, the *Mulier* is barred: Otherwise, if two Daughters, and one of them had no colour of partition, if Bastard *eigne* dye in the life of his Father, having issue, who enters after the death of the Father, and dyeth seised, having issue. *Quare*, if the *Mulier* be barred, *Mulier* is barred by descent, before entry of the Son of the Bastard *eigne*, as if issue be in *Ventre sa mere*, or the Wife of the Bastard indowed.

John Talbots Case, 7 *Jac.* in Second deliverance, fo. 102.

[Lord and Tenant by Homage, Fealty, and Herriot service of 50 acres, the Tenant infeoffeth the Lord of three acres, and after infeoffeth the Plaintiffs father of three other acres, parcel, &c. who dyeth, the Lord distreineth for Herriot, the Plaintiff brings replevin, and good. 1. All intire services to render an intire Chattel of profit, or pleasure, by alienation of part shall be multiplied, and by purchase of part by the Lord, extinct. 2. Personal services for the publique good, which are intire, as Chivalry, Homage, and Fealty, shall be multiplyed, and not extinct. 3. Other personal services, as Butler, Sewer

er, &c. shall not be multiplied, but shall be extinct, So of a personal office, and manual labour. 2. There is no diversity between an intire Chattel, be it annual or not, as it is to render a Horse every five year by purchase of part, it shall be extinct. 3. If the Father of the Plaintiff had been first infeoffed, and then the Lord, the Herriot had remained, because there the Father of the Plaintiff, held by a several Herriot before the Lord was infeoffed. 4. But Herriot custome, by purchase of part is not extinct.

Doctor Bonham's Case, 7 Jac. fol. 114.

THE President and Censors of the College of Physicians in L. by colour of Letters Patents of H. 8. and the Statutes of 14. H. 8. and 1. Mar. fined and imprisoned Doctor Bonham, for practising of physick in L. without their allowance, (the fine to be paid to them,) and also for contempt made to the College, whereupon he brings false imprisonment, and adjudged for the Plaintiff.

1. Whether a Doctor of one University or other, be within the act.

2. Admitting that he is, whether he be within the exception in 14. H. 8. Justice Daniel held, that such a Doctor was not within the body of the act, and if he were, yet he is within the Exception, but *Warburton contra*, for both points: *Cooke* spake not to them, but they all agreed that the Action was maintainable for two other points.

1. Whether the Censors have power to fine and imprison.

2. Admitting that if they have pursued it. The Censors have no power in this case to imprison the Defendant, for they have no power to punish by fine and Imprisonment, those who practise without their

License, but those practisers who misadminister physick
1. Because the clause that none shall practise without
their License, and the clause which giveth to
them the said power, are distinct clauses.

2. The first clause imposeh another penalty, and
3. every moneth that he practiseth, but leaveth
the evil administration of Physick to be punished
by the College, because this is uncert in.

3. To make one punishable by the first Branch, he
ought to practise by a moneth, otherwise it is by the
second.

4. By this way they shall be both Judges and parties
in one cause.

5. If Doctor B. shall be punished by 5 *l.* by the
moneth, and also at their pleasure, he will be often
punished for one offence. 2. Admitting that they
had power, yet they have not pursued it. 1. Because
the President, who hath no power, joined with them.

The fine was imposed for not appearing before
the President and Censors, and the President had no
power. 3. Half of the fine belongs to the King;
and here all is to be paid to them. 4. The Imprisonment
ought to be perfectly, as upon the Statute
of *W. 2. cap. 12.* 5. Their authority being by Patent
and Statute, their proceedings ought not to be by
Parol, and the rather, because they claim authority
to fine and imprison.

6. It shall be taken strict, because against the liberty
of the Subject, therefore before 1. May. the
Grosler was not bound to receive them, and this
doth not enlarge their power, but that the Grosler
shall forfeit double the Amerciament, if he refuse.
Admitting the replication voyd, although that the
College demurr upon it, yet the Plaintiff shall
have judgement, because in the barr, the Defendants
have shewed that they have imprisoned him

with

Without cause, for upon all the pleading, it appeareth, that he had cause of action; but if a barr be insufficient, and by the replication it appears, that the Plaintiff had no cause of Action, he shall not have judgement: A Count may be made good by barr, and a barr by replication in matters of circumstance, but not of substance. See there seaven things observed by *Cooke*, for the better direction of the President and Comminalty of the said Colledge hereafter.

The Case of the City of London, 7 Jac. fol. 121.

IT is a good custome within a City that a Foreiner within the said Citie shall not sell things by retail, and it is good also upon pain of 5 *l.* but it is not good by Charter, therefore Cities which are incorporate within time of memory cannot have such privileges without Parliament: so of a custome, that goods forein bought and forein sold, shall be forfeited: so one may prescribe to have a Bake-house in a Town, and that no other shall have one there, and the Statutes which provide that every one may sell in retail, or in grosse, extend only to Merchants, aliens and denizens, who export and import things vendible. Three inconveniences by confluence of people to *London*, &c.

The case of Thetford Schoole, fol. 130. 8 Jac.

LAnds of the yearly value of 35 *l.* in *An. 9. El.* was devised by the will of *Thomas Fulmerstowe*, to certain persons and their Heirs for maintainance of a Preacher, four dayes in the year, of the Master and Usher of a free Grammar School, and four poor People, *Viz.* Two men and two women, and

a special distribution was made by the Testator, amongst them of the said Revenues, (*Viz.*) To the Preacher one certain Sum, to the School-master, and other certain Summes, and to the Poor, &c. amounting in *Toto* to 35 *l.* *per annum*, which was the annual profits of the Land at that time, and after, the Lands became of a greater value, (*Viz.*) 100 *l.* *per annum*. Question, whether the Preacher, School-Master, Usher, and Poor, should have only the Summes appointed to them by the Founder, or that the renew and profits of the Land shall be employed to the increase of the Stipends of the preacher, School-Master, &c. or in what manner the surplusage should be employed. And it was resolved, that the Renew and profit of the said Land should be employed to the increase of the Stipend of the Preacher, School-Master, Usher, and Poor, and if any surplusage remain, the same to be expended to the maintenance of a greater number of Poor, &c. and nothing thereof to be converted to the Devisees, or their one use, and this resolution is grounded upon apparent reason, for if the Lands should decrease in value, the Preacher, School-Master, &c. should lose; so when the Lands doe increase in value, (*Paratione*) they should gain, *Vide Statutum Templarum ita semper quod pia & celeberrima voluntas donatorum in omnibus teneatur & perpetuo sanctissime perserveret.*

Turners Case, 8 Jac. Com. Banco, fol. 132.

IN Debt against an Administrator he pleads recovers had against him in the Court of C. which amounts to all which he had in his hands, the Plaintiff replyeth, that one is by Covin, and that the other recoveror had accepted a composition, and that the

the Defendant delayed to accept a Release to defraud the Plaintiff: adjudged for the Plaintiff. 1. Although that two recoveries are without covin, yet the composition so operates, that nothing shall be accounted administred, but only so much as he hath paid by composition, and the converting any part to his own use, and the deferring to accept a Release, is against the office of an Executor, and shall not aid him. 2. The barr is insufficient, because he hath not shewed that the Court of C. has power to hold plea of debt. 2. Because he hath not shewed that the Testator was bound in an Obligation, and if it were only upon contract, the Administrators were not chargeable in Debt. 3. Be the replication evil, yet because the Barr is insufficient, the Plaintiff shall have judgement, because he had not shewed any thing against himself, but if it appear by the replication that he had no cause of Action, he shall be barred.

Mary Shipleys Case, 8 Jac. fol. 134.

AN action of Debt against an Executor of 200 l. the Defendant pleaded, *Plene administravit*, the Plaintiff replies, that the Executor had assets, the Jury found assets to the value of 172 l. judgement was given to recover the whole Debt of 200 l. and damages, and costs of the goods of the Testator. &c. *Et si non*, then the damages of the proper goods of the Defendant.

Sr John Nedhams Case, 8 Jacobi, Com. Banco, fol. 135.

IN debt as administratrix upon administration committed by the Bishop of R. the Defendant pleads

administration committed unto him by the Deane and chapter of C. sede vacante, because the Intestate had bona notabilia, &c. the Plaintiff replies that that administration was repealed: adj. for the Plaintiff.

1. Resol. Because it is not shewed that the Intestate had bona notabilia, &c. it shall be intended that he had not, and yet the administration is not voyd, nor voydable.

2. Before the repeal of administration committed by the Metropolitan, the inferior Ordinary may commit administration, because this is by the repeal declared voyd, ab initio, and an administration without an authority which may well commence in futuro.

3. The committing of administration to the obligor hath not extinguished the debt, because it is in anothers right, otherwise it is, if the Obligee himself make the Obligor his Executor, because this is his own act, De bonis defuncti tria dispositio. 1. Necessitatis, ut funeralia. 2. Utilitatis, that every one shall be payd in due order. 3. Voluntatis, as Legacies.

Sir Francis Barringtons Case, B Jac. Communi Banco, fol. 136.

The Lord R. granted wood within a Forest, in which the Plaintiff had common, which grant confirmed by Statute, the grantee cuts wood, and incloses it, the commoner shall lose his common for seven years.

1. Resol. The grantee had an inheritance to take in another soyl, and the soyl is to the Lord R. 2. Although the grantee had not the inheritance, yet the Statute extends to him, and he may inclose, for the Statute is, or any other person to whom wood is sold, 3. 22. E. 4. cap. 7. extends to wood which one

one had in severalty, and not where another had common there: for at the common Law, one who had wood in a Forest cannot inclose against a commoner, but if it be his several wood, he might inclose, *parvo fossato, &c.* for three years.

4. The said Statute is as a conveyance between the King and his Subjects, which taketh not away the right of third persons, as the commoner here is.

5. In the said Statute there is a clause that he may inclose without suing to the King, or other owner, so that power is given against them, and not against a commoner. Beasts of Forests are Hart, Hind, Hare, wild Boar, and Wolf: of chase, Buck, Doe, Fox, Martin, and Roe.

6. By the Statute of 35. H. 8. cap. 17. he is barred of his common, which provideth that no Beasts shall be suffered to come there for seven years.

7. The Statutes which concern Forests are general, because they concern the King, and the Court shall take notice of them.

Doctor Druries Case, 8 Jac. fol. 141.

DOCTOR Drury recovers against B. who is outlawed, and taken by *Capias utlegatum*, and escapeth, the Outlawry is reversed, Doctor Drury sueth execution, B. brings an *Audi a querela*, adjudged that it lyeth not. It was resolved, that if A. be in execution at the suit of B. upon an erroneous judgment, and after escape, and after the judgement is reversed by a Writ of error, the action against the Sheriff is extinct, for he may plead *Nul tiel recorde*: But until it be reversed, it remaines in force, be it never so erroneous; and if the partie have judgement and execution upon the escape against the Sheriff or Gaoler, and after the first judgement is reversed, yet for

such as Judgement upon this collateral thing is ex-
torted it shall remain in force, notwithstanding the
reversal of the first, 7. H. 6. 4. Yet it seemeth to me,
he may have remedy by *Audita querela*, for that the
ground and cause of the collateral action is disproved
by the reversal of the first Judgement, a difference
between mean acts, compulsatory, and voluntary,
and between a recovery by eigne title, and reversal
of a recovery.

Davenports Case, 8 Jacobi, fol. 144.

Enant for years of an advowson granteth *proxi-
mam advocacionem & donationem, si eadem Ecclesia
megerit vacua fore durante termino, &c.* And after-
ward surrenders his terme, yet if the prochin avoid-
ance be within the terme, the grant is good, for
years cannot determine, but the effluxion of time,
and the Law implyes a limitation, if the Church doe
remain voyd, during the terme: For *expressio eorum quæ
sunt insunt nihil operatur*: Likewise if a Lessee for
years grant a rent charge, and after surrender, yet for
the benefit of the grantee the terme hath continu-
ance, although in *rei veritate*, it is determined, and the
grantor himself shall not derogate from his own
grant to make it voyd at his pleasuer

The six carpenters Case, 8 Jacobi, fol. 146.

It was resolved when entry, authority, or License,
is given to any by the Law; and he abuse the same,
in this case he shall be a Trespassor *ab initio*: But
when entry, authority, or license, is given by the
party, and he abuse the same, there he shall be pun-
ished for his abuse, but he shall not be said to be
trespassor *ab initio*; and the diversity is this because

the Law doth judge by the act subsequent, *quo animo*, or to what intent he enters, *acta exteriora judicant interiora secreta*: But when the party giveth authority &c. to doe a thing, he cannot for any subsequent cause punish the same.

1. The Law doth give authority of entry into common Inn, Tavern, &c.

2. The Lord to enter and distrein.

3. To an owner of the Soyl to enter and distrein damage feasant.

4. To him in reversion to view if waste be committed.

5. To a Commoner to enter into his Land to view his Cartel, &c.

But if he that enters into an Inn, &c. doe trespass, or take any thing away, or if the Lord that distreins for rent, or owner for damage feasant, bourn, or kill the distressee, or he that enters to view waste, bruse the house, or stay there all night, if a Commoner sell Tymber; in these cases and the like, the Law judgeth that he entered for the same purpose; and therefore the act that doth demonstrate this, is, to be a Trespass, and he shall be a Trespasser *ab initio*: It was Resolved, that the seasons, or not doing of a thing is not any Trespass where the Law giveth License or authority to do (viz.) to deny to pay for Wine in a Tavern, is a Trespass, but the Taverner may have an action of debt, 12. E. 4. 8. If a Taylor overvalue the making of a garment, and the necessities thereunto, he shall not have an action of debt for his own lues, unless it be specially agreed upon before, he may detein the Garment; until he be paid and satisfied; and if the party sue for the same, the Jury shall set down the value, and the Taylor shall have no more, but be barred for the rest: Likewise

Offler may detein an Horſe, &c. Tender of ſuffi-
 amends for damage teſant before the diſtreſſe
 is good, and the taking of a diſtreſſe afterwarde
 wrong; tender after the taking of a diſtreſſe, and
 before the impounding, maketh the deteining wrong,
 not the taking; but tender after the impound-
 commeth to late, for then the cauſe is put to the
 ſayal of the Law.

Edward Althams Case, 8 Jacobi, fol. 150. In Dower
 and pleaded.

Seiſed in fee of Lands in W. and G. deviſeth
 the Lands in G. to his younger Son for life; it
 agreed between the eldeſt Son and the Widow
 of T. N. that ſhe ſhould releaſe her dower in W.
 releaſeth unto him, *Omnes actiones demand, &c.*
omnem dotem & titulum dotis, &c. de aliquibus
 in W. both the Sons dye, ſhe brings dowre of
 Lands in G. and judgement given for the de-
 ſendant.

Reſol. A Release of all actions to him in the re-
 ſon barreth not dowre, becauſe ſhe had no cauſe
 action againſt him, but againſt the Tenant of the
 hold, but a releaſe of all her right to him in the
 ſon extinguiſheth dowre, for a releaſe of right
 actions, but a releaſe of actions barreth not
 right, if there be other means to come to it; o-
 therwiſe not, as if the diſſeiſee releaſe all actions to
 the heir of the diſſeiſor, the right is extinct, other-
 wiſe is if the releaſe be to the diſſeiſor, and a diſ-
 ſeſſor, or if the Release be to the Leſſee for life
 the heir; a Release of all actions real and per-
 ſonal is no barre in a Writ of Errour, but a releaſe
 a Writ of Errour is; a releaſe of actions is no barr
 have Execution; if he be not put to a *ſive faciat*,
 Y 2 a releaſe

a release of a thing due before the time of payment thereof, is good: *Querela* is more than an action, by that the cause of action is released; by release of futes, executions are barred, for none shall have execution without fute for it, so it is of all duties; by a release *de querelis infectis*, in that case barreth dowre; by release of titles dowre is barred; and by release of demands, which is the most ample release of all.

2. The collateral agreement is not of any force or effect, but general words ought to be qualified by words contained in the same Dced, as in this case, *ubi contingent per mortem dicti T. viri mei de aliquibus terris in w. & c.* and so extends not to any Land in G. but restraineth the general words to the Lands in W. only: *Quando carta continet generalem clausulam, postea que descendit ad verba specialia, quæ clausula generalis sunt consentanea, interpretanda est carta secundum verba specialia*: As if a man grants a rent in *manerio de* percipiendum, in 100 Acres parcel thereof, with clause of distress in the 100 Acres, the rent shall issue of the 100 Acres only.

Arthur Blackamores Case, 8 Jacobi, fol. 156.

THe Defendant is named Gent. in the original Writ, but by negligence of the Curfitor he was outlawed by the name of Knight; this is amendable at the Common Law; but in case of the King, by fault of the Court was amendable at the Common Law, as erroneous entrance of the continuance, *soyn, &c.* and any part of the Record the last Terme; and therefore diverse Statutes of amendment were made, one of the last whereof was, 6. cap. 12. which was more large, and extended to process, and to seven other things, to Records, Pleas, Parole

Parols, Warrants of Attorney, to Writs original and
 judicial, Pannels, and Returnes ; that is, where it
 is the misprison of the Clerke, and only the de-
 fault of the Clerk by negligence is amendable, but
 not by his nescience, as if an action be brought a-
 gainst executors in the *debet* and *detinet*, or if it be false
 Latine, but if a word which is not Latine be written
 for a Latine word, this is amendable, as *Imaginavit*,
 for *Imaginatus est* : in a Writ of Trespasse against
 diverse, if it abate for default against one, it shall
 abate against all, but if it be for matter in fact on-
 ly, as for misnaming one Defendant, it shall abate
 only against him ; omission or addition which doth
 not alter the form is amendable, as if *Dei gratia* be
 omitted: Voluntary or negligent keeping of Records
 by the Clerk is amendable by other parts of the Re-
 cord, or by exemplification: Count or plea in barr,
 which wanteth substance, shall not be amended
 in another Term, but default in the colour (because
 this is the default of the Clerke) shall be ; a Record
 shall be amended in another Term by the Paper
 Book, and a thing appparent to be the fault of the
 Clerk shall be amended in another Term, as *rien luy-
 bit des hoc. &c. & predictus f. nd p o querent. Nisi pri-*
 shall be amended by this Statute, if power be gi-
 ven to the Justices to proceed, otherwise not, as if it
 be joyned in the Record be mistaken in the *nisi pri-*
 it shall not be amended, but misprison of damma-
 ge shall be, because this is not material to the issue,
 and it is the default of the Clerk : Warrant of At-
 torney, and returnes are amendable by this Statute,
 but if there be none at all, it is out of the Statute ;
 and because this Statute leaveth many cases without
 remedy, the Statutes of 32. H. 8. cap. 30. and 18. El:
 14. were made : Ten misprisions as yet not re-
 medied.

1. Variance material between the original and the Court.
2. Want of substance in the original or Court.
3. Insufficient tryals.
4. If a Coroner returns the Jury where the Sheriff ought.
5. Lack of name of the Sheriff to the return.
6. Where no return is indorsed upon the *Vener facias*.
7. When one who is not returned, giveth a Verdict.
8. Pleas of the Crown.
9. If it appear to the Court that he who hath a Verdict had no cause of Action.
10. Error in Law.

Cases in the Court of wards.

Mights Case, 7 Jacobi, fol. 163.

1. **R**ESolved, if I. M. purchase Lands to him, and an Infant in fee, it cannot be averred that this was to take away the Wardship, because he never was Tenant to the King.

2. No feoffment that I. M. can make of his Moieties can be averr'd to be by collusion, &c. because without feoffment no Wardship shall be, and also the Statute speaks of sole seisin.

3. A feoffment to the wife or younger Child cannot be averred to be by covin, &c. upon construction of the Statute of 32. & 34. H. 8. where collusion cannot be averred by the Statute of *Marlebridge* it cannot be now to seize all the Land, but it may be for the third part which belongs to the King: a third part be left to the King, no averment

may be for the other two parts, the Father makes a feoffment to diverse uses, the remainder to his second Son and dyeth, his Eldest Son dyes, the second Son shall not be in ward by averment of co-tenants.

Digbies Case, 7 Jacobi, fol. 165.

TENANT of the King conveys his Lands to the use of himself for life, the remainder to his Son and Heir in tail, and after is attainted of Treason, the King shall have no wardship of any part of the Land by 32. & 34. H. 8. because there is no heir, and livery must be sued in the name of the heir, but the King shall have wardship in such a case before 26. H. 8. because there was an heir.

The Earl of Cumberlands Case, 7 Jac. fol. 166.

R. C. H. 6. granted the reversion to T. C. if the
will be good, if not, he grants it in possession, this is
good one way or other, and so are many patents from
time to time.

Paris Stonghters Case, 7 Jac. fol. 168.

BY mandamus it was found that P. S. dyed seised
40. El. and held of the Queen in common socage,
7. Jacobi a *Melius inquirendum* was awarded, whether
he held of the King by common socage, or in chival-
ry, and it is found that he held of the Queen by chival-
ry. This Writ of *Melius*, &c. is repugnant,
and giveth no authority to find this Office, because a
Tenure cannot be of the King, in the time of Queen
Elizabeth, and therefore a new Writ shall be award-

ed, but if the first *Melius* be good, no other shall issue. 1. For avoyding Infiniteneſſe. 2. A *Diem claſſiſi*, &c. ſhall not iſſue upon a *Diem*, &c. Nor a *mandamus* upon *mandamus*, ſo a *Melius*, &c. ſhall not iſſue upon a *Melius*, &c. 3. If an office be found againſt a Subject, he ſhall have a traverse, and if upon that he be found againſt him, he hath no remedy: So the King ſhall have but one office, and a *Melius*, and no more, although that a tenure be found of two Subjects, or one hath an *Ouſter le maine*, the King ſhall not reſeiſe without a *Scire facias*.

Toursons Case, 3 Jacobi, fol. 170.

IF Tenant of the King commir Felony, 1 *Jacobi*, and after is attainted *An* 3. for the ſame, and after in 4th. 4. all is found by office. Now this office ſhall have relation to the time of the Felony, to avoyd all mean alienations and incumbrances, but for the mean profits it ſhall have relation to the time of the Attendor, for then the Kings Title appeares of Record, and the like Law is of an *Idiot*. But in caſe of a ward within age, the King ſhall have the mean profits from the death of the Aunceſtor, becauſe he hath it by reaſon of his Seigniorie, and loſeth the rent and ſervices in the mean time; the difference is when the King ſeiſeth *jure protectionis regie* or *Nomine diſtinctionis*, and when *Ratione Prioritatis ſeu tituli*.

Sir Gerard Fleetwoods Case, 8 Jacobi, fol. 171.

Sir William Fleetwood receiver of the Revenues of the Court of wards, in *Anno* 35. *Elix.* was poſſeſſed of a Meſſuage and certain Land in *Harrow Com. Mid.* for a term of years, in *Anno* 36.

he became a receiver general, and was bound in 20. Obligations of 200 l. a peece to make true Account &c. And after upon several accounts he became indebted in great Sumes of money to the Queen, and being so indebted in consideration of 1100 l. did bargain and sell the said Lease to James Pemberton, which by mean conveyance came to Sir Gerard Fleetwood. Question Whether this Lease, &c. was extensible and lyable to the Kings debt, &c. and it was resolved, that the said sale of the Term was good, against the King, because the term was but a Chattel, and the sale of the Chattels after judgement, *Bona fide*, is good, but not after Execution awarded.

And Cooke chief Justice, said, that a Receiver or other accomprant which is indebted, shall not be in worse case than a Felon or a Traytor, that may after Felony or Treason, and before conviction, sell, *Bona fide*, for his sustenance, &c. his Chattels, either real or personal.

Hales Case, 8 Jacobi, fol. 172.

THe Heir Ward comes to full age, and renders his Livery, and bargaines and sells, and dyes, the interest of the King is determined, and Bargainee shall not answer for the mean profits, for the Heir had done all that he could doe, and no default in him, otherwise if he had not rendred it.

Sir Henry Constables Case, 8 Jacobi, fol. 173.

THe Son of the Tenant of the King is made a Knight in the life of his Father, the Father dyes, the Son within age tenders his livery, by that, the mean profits are saved, and the King shall not have the rates within age.

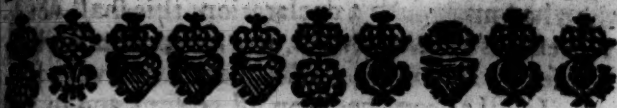
Virgill

Virgil Parkers Case, 8. Jacobi, fol. 173.

Virgil Parker seised of the Mannor of *Fushell* in
 the holden of the King in chivalry of his Dutchie
 of *Lancaster*, maketh a feoffment of the one half to
 the use of himself for life, and after to the use of *Mary*
Coney (whom he intended to mary) for her life for
 her jointure, and after he married her, and then Lea-
 sed the other half to I. C. for years, for payment of
 his Debts and Legacies, and dyed, his heir within
 age. Question, Whether the King should have the
 third part out of the Mannor so Leased only, or out
 of the whole; and it was resolved, that it shall be out
 of the whole mannor, although the State of the
 Wife was precedent, that is, equally out of both
 parts.

The End of the Eighth Book.

THE



THE NINTH BOOK.

*Downmans Case, 28 Eliz. Communi
Banco, fol. 7. An Assise pleaded.*



He defendant in an assize makes Title by a recovery, suffered by P. V. to certain uses, the Plaintiff confesseth the recovery, and saith, That it was to the use of the said P. in fee, and traverseth that it was to the uses mentio-

ned by the Defendant, the Jury found that it was suffered as the Defendant had alleged, and that by Indenture subsequent, the intent of the parties was declared by them to be as the defendant had alleged, adjudged for the Defendants.

1. Resolved; that this subsequent Indenture directs the uses of the precedent recovery by estoppel against the Recoveree, and his Heirs, and although that it be granted, that a deed is requisite to the privilege without impeachment of waste, yet the estate without Deed is good: No averment can be taken that the recovery was to other uses than are mentioned in a precedent indenture, otherwise in an Indenture subsequent, because, if uses were declared by a precedent indenture, no Declaration after shall devest them: so if P. V. had charged the Land, and then

then had made such a declaration, this shall not de-
vest estates of grantees, &c. but no declaration being
he uses by Declaration subsequent, be divested.

2. In all actions between all persons, and in all
sues the Jury may give a verdict at large, and the Sta-
tute of W. 2. cap. 30. which giveth it in Assize, is but
an affirmance of the Common Law, but a Jury cannot
find a thing impertinent to the issue,

The death of Sir *James Eyre* Chief Justice of the
Common Pleas, with an ample and memorable En-
comium of him by Sir *Edward Cooke*, &c. *Vivit post
funera Virtus.*

Anna Bedingfeilds Case, 28 Eliz. fol 15. In dower.

A Common essoyne is allowable in dower, and the
Statute of 12. E. 2. is to be intended of an essoyne
in the Kings service, for the Statute saith in preroga-
tion of the right which is properly this essoyne which
is for a year and a day.

2. If the tenant of the King dyeth seised of diverse
mannors, and it is found by office that he died seised
of one, in dower brought against the Heir of full
age he sueth a *Circumspecte agatis*, this extends not to
more than is in the office, for this Writ is in the na-
ture of an *ayde praier*, and the King hath no right to
seize more than is in the office, and as to this Mannor
it was objected, that it shall be allowed as well as if
the Heir be within age, for in this Case, by the Sta-
tute of *prerogat. Regis cap. 4.* that the Feme may be
indowed in Chantry: It was answered, that by the
Statute of *Bigamis, cap. 4.* ayd shall not be granted
of the King in that Case, and therefore before the
Statute of *Prerogat.* the King nor other Lord could
not indow the Feme, if the Heir were full of age,
because he is not then Gardian, and the Statute of

Prerogat. giveth power to the King to indow the Wife in such case, if she will, and not otherwise: Where the Heir pleads to Dower, detinue of Charters, they ought to concern the same Land, and this plea is to be allowed, because the Feme who deteineth Charters is not worthy to have Dower, and also for the privity which is between the Heir and her.

2. The Heir ought to shew the certainty of the Charters, or that they were in a Chest.

3. None but the Heir himself shall have this plea; nor the Heir himself, if he cometh in by purchase, or if the Feme had them by his delivery, nor if he comes in as Vouchee having no Lands in the same County, or as a Tenant by receipt, because in these cases he cannot plead as he ought, that he is ready to render Dower.

4. A Gardian shall not plead it, because the Charters doe not belong unto him, but he may plead, detinue of the Ward, and if it be not restored unto him unmarried, the Feme shall lose her Dower, and after, the Tenant waved this plea, and pleaded *Unques accoupled*, in loyal Matrimony, and the Bishop of N. certified, that they were lawfully married, whereupon the Demandant had judgement.

Case of Avowry, fol. 20.

IF there be Lord and Tenant by Fealty, and rent, and the Tenant make a Lease for years, and the Lessee hath done his fealty and paid his rent continually, and yet the Lord distreineth the Beasts of the Lessee for the rent, and avowes upon a meer stranger as upon his very Tenant.

Question, whether the Lessee be without remedy, for it is a position in Law, that a stranger to the avowry

vowry shall not plead, but *Hors de son fee*, &c. But it was resolved, that the Lessee shall be releaved, and he must allege, that the Lessor is seised of the Tenancy, &c. and the Lord shall be compelled to avow upon the Tenant, and the false avowry of the Lord upon a stranger, which is not very Tenant, shall not hurt the Lessee against the verity of the case, *Quia veritas nihil veretur nisi abscondi.*

If one come to distrein for damage Fesant, and seeth the Beasts, and the owner chase them out, the party may not distrein them damage fesant, but is put to his Action of Trespasse, for the beasts must be damage fesant, at the time of the distress taken, he who distreines for services upon fresh sute may avow upon the Land by the equity of 21. H. 8. c. 19. if the Lord distrein when no rent is arrear, the Tenant or Lessee may make rescous, and so relieve himself.

The Abbot of Strata Marcella his Case, 34 Eliz. fol. 23.

IN a *Quo warranto* for claiming Waives, &c. and Fellons good, &c. the Defendant pleaded as to the Fellons goods, that the Abbot of S. M. *Licite habuit & gavisus fuit* them until the Abby was granted to the King by 27. H. 8. and pleads also, 32. H. 8. c. 20. of reviving of privileges, of Abbies, and that the King granted a mannor parcell of the Abby, & *collata & tanta privilegia*, as the late A. had, to one by whom he claimed by feoffment, and pleaded not the feoffment by deed: Judgment against the Defendant, for the Queen, it was said, that the Charter of the Defendant was void.

1. because it appears not what estate the Abbot had.

2. Be-

2. because the Defendant claime th *Catalla felonum* appendant to a Mannor, because he pleaded a feoffment of the Mannor, and had not pleaded it by deed, without which the privileges do not passe.

To the first the Court answered that it shall be intended a seisin in fee until the contrary be shewed.

To the second no resolution, but it was resolved, that if the King grant a Mannor, & *bona & catella felonum dicto Manerio spectant*. these passe although they cannot be appendant.

But for the third exception, judgement was given against the Defendant: In this Case four things worthy of consideration.

1. That antient Franchises ought to have allowance, as to that, some may be claimed by prescription without record, and some by record only, and a Charter of the latter shall not be allowed, if it be before time of memory, if it be not allowed within time of memory, as allowance in Eyre, or confirmation by the King, but usage will not serve, and no more shall be allowed then are confirmed: Obscure words in these antient Charters shall be construed according to antient usage, and not according to usage at this day.

2. A man man prescribe in Franchises living in poynt of Charter, with aid of allowance in Eyre, without shewing the Original Charter.

3. If a Patent of privileges whereby they are granted in fee referre to a grant made before to one for life only, this is good, for the relation is to the quality, and not to the quantity of the estate. See there what tryals shall be allowed by Law, such privileges as are antient flowers of the Crown, as *Bona & catalla felonum fugitivorum*, &c. if these come again to the K. they are merged in the Crown, but not those which where erected and created by the K.

as

as Fairs, Markets, Parkes, Warrens, and the like.

Bucknalls Case, 42 Eliz. Com. Banco, fol. 33.

IF the Lord avow for other services then the Tenure is traversable, if for more services of the same nature, the seisin is traversable, for he may incroach and it cannot be avoyded in avowry, if it be not for an outrageous distresse, but seisin binds not in *injuste vexes, cessavit, Assize, Rescous, or Trespass* but in them he shall traverse the tenure, but issue in tail, successor of a Bishop, &c. shall avoyd seisin in an avowry, and every one may, that can shew a defect of the tenure, but none shall have a *Contra formam Feoffamenti*, but the scoffee or his heirs, an incroachment hurteth not, where there is no Tenure, and if an incroachment be of payment at more dayes, they agree in the Sum, it doth not prejudice. Seisin in an avowry is not traversable generally as never seised of the services, because by that means he leaveth no remedy to the Lord by avowry, but in such a Case he shall disclaim or plead out of his fee, and shall traverse the Tenure: he who denyeth seisin after the limitation, must first acknowledge a Tenure, that the Lord may have his Writ of Customes and Services, as if the avowry be for rent, fealty and sute.

Henslowes Case, 42 Eliz. fol. 39.

AN Action of Debt was brought against Gage and others as executors, one of the Executors refused before the Ordinary the probare, and the rest of the Executors proved the Testament, it was adjudged, that notwithstanding that refusal, he may administer the will afterwards at his pleasure, for when

When many are named Executors, and some of them refuse, and other some prove the Testament, those which refused may afterwards administer, notwithstanding the refusal before the Ordinary, but if all refuse before the Ordinary, and the Ordinary commits the administration to another, then they cannot prove at any time, and the Executor that proveth the Will ought to name every other of the Executors that refused in every action for recovery of Debts of the Testator, and they may release the debts, duties, &c. and they which refused may have an action by survivor, and after that Executors have administered, and have once taken upon them the charge of the Executorship, they cannot refuse at any time.

It is holden in 2 R. 3. tit. testament. 4. that it is of late times that the Church had the probate of Testaments in this Land, for 'twas given by an act; and in all the Nations it is not so, but in England, and in many places of England, the Stewards of their Courts Baron, have probates of Testaments in their temporal Courts at this day.

Lynwood who was Dean of the Arches and writ in his Dom. 1422. did confess the probate of Testaments to belong to the Ordinaries *De consuetudine Angliae & non de communi jure*, & that in other Realmes the Ordinaries have not so, and in another place he affirmeth that the power of the Bishop in probate of Testaments, is, *Per consensum regni & suorum procerum antiquo*. And I have seen a Book in Latine, published 1573. by the Reverend Father Matthew Parker, Arch-Bishop of Canterbury, who was very learned in matters of antiquity, in these words, *Rex Angliae erat conciliorum Ecclesiasticorum praeses, vindex veritatis Romanae, propugnator Religionis, nec ullam turbant Episcopi auctoritatem praeter eam quam à rege*

acceptam referebant, testamenta probandi non habebant, ad administrationis potestatem cuique delegare non poterant.
 It was resolved by Littleton, Newton, and Danby, in 7. E. 4. 14. that if all the Executors refuse before the Ordinary, they may prove the Testament afterwards, but I think this is before the Ordinary hath committed the administration, for afterwards they cannot. The Executors have their Title by their Testament, which is temporal. But to the suing of Actions in the Kings Courts, the Judges will not admit Executors for to sue, except that they shew the Testament proved under the seal of the Ordinary duly, but alwaies the Kings Courts have used to allow the probate of any of the Executors to inable them all to sue actions, but the probate of the Testament doth not give to them any interest or Title, either to the things in action or possession, for they have all their Title and interest by the Testament, and not by the Probate.

Power to grant Administrations was granted to the Ordinary, by the act of 31. Ed. 3. ca. 11. for before that time, when a man died intestate, the King who is *Pater Patrie*, was accustomed by his Ministers to seize his goods, to the intent they might be preserved, and bestowed for the Burial of the dead, for payment of his debts, for advancement of his Wife and Children (if he had any) otherwise to his Kindred, as appeareth in *Rot. Claus. de 7. H. 3. in ib. bonorum ratorum capi solebant in manus regis, &c.* And after this care and trust was committed to the Ordinary, and it was resolved, *Per totam Cur. M. 8. 9. Eliz. Dyer.* that the Ordinary himself hath no authority to sell any goods of the intestate, though they be in danger of perishing, neither can he release any debt due unto the intestate, by a Statute in 31 Ed. 3. ca. 11. the Ordinary shall depart

next and most lawful friends of the dead person in-
estate to administer his goods. and the Statute in
An. 21. H. 8. ca. 5. is, that the Ordinary shall grant
the administration to the Widow of the same person
so deceased, or to the next of his Kin, or to both, as
by the discretion of the Ordinary shall be thought
good, &c.

Read this Latter Statute, to whom administrations
shall be granted.

The Earle of Shrewsburies Case, 8 Jacobi, fol. 46.

1. **R**ESolved, that the grant of the Stewardship of
the Mannors of M. and B. without naming the
County in which, &c. is good, as if the K. grants all
the Lands of priors, aliens, without naming the
County, but the party in pleading must name the
County, and upon *Non concepit* pleaded, it will ap-
pear by the evidence, and by circumstances, what
Mannor was granted; but if he had demanded oyer,
and demurred, it will be adjudged against him, for it
is matter in fact, and the acts of confirmations ex-
tend not where the County is omitted, but where
the County is misnamed.

2. The grant from a day past is good, and the in-
stant was, that the Earl shall have the fees from that
day, but if that cannot be, it shall be good for the
time to come.

3. The Earl had no power to make Deputies,
in three offices passe by these Letters Patents seve-
rally, whereof this is the middle, and to the first
power is annexed to make Deputies, but not to the
second; the words are *Habendum offic. prad.* (with
such a contraction) To that the Court answered,
that this *Habendum* shall have relation to this office,
for it is intended, that the Earl shall exercise this

base office by Deputy, for if a Sheriff shall do it, a *Fortiori*, an Earl. 2. Admitting that he cannot make a Deputy, this *Non user* is no cause of forfeiture, for true it is, when an office toucheth administration of Justice, *Non user* without request, is cause of forfeiture, but if he be not bound to exercise it without request, otherwise it is as here, he is not bound by the Letters Patents to hold Courts untill he be required: if an Office be private and not for administration of Justice, *Non user*, without damage or request is no forfeiture. 4. Resolved, that the Writ and count were good, although they were *Vi et armis*, and the difference is between *Non feassans*, or negligence, and *disfeassance*, that may be *Vi & armis*, therefore if one bring an Action upon the Case, *Quare vi & armis*, he hindered men from coming to his Fair, which is *Causa causans*, whereby he lost his toll, which is *causa causata*, and the point of the Action, this is good. 5. The Office not being meinorable, it is in his Election to have an Action of the Case, or an assize, otherwise it is of Land. See five exceptions taken to the Verdict: *Falsa Orthographia*, *non vitiat concessiones*, and the difference is between Writs and Grants: *Ille numerus & sensus abbreviationum decipiendus est, ut concessio non sit inanis*, and judgement was given for the Earl of R.

Hickmots Case, 8 Jacobi, Com. Banco, fol. 52.

IN debt upon an Obligation, the Defendant pleads a Release, which is in these words, The Oblige confessed himself to be charged of all Bonds, &c. and that he will deliver all but one bond, whereupon the action is brought, which was made by the Plaintiff and another.

1. Resol. These words that the Oblige confessed

ish himself to be discharged of all Bonds, is a release, and amounteth to that, that the Bonds are discharged.

2. The exception extends to all the premises, and not only to the delivery.

3. The Plaintiff by confessing that the Obligation was made by another, and the Defendant against whom only he brought the Action, had abated his own Writ, and after the Plaintiff was Non-suited.

Batens Case, 8 Jac. fol. 53.

Quod permittat to abate a House levyed, *Ad nocumentum liberi tenementi* I. P. and now of the Plaintiff, and Courts, that the House of the Defendant hath jurtie over the House of the Plaintiff, and judgment given for the Plaintiff.

1. Resolved that the Plaintiff needs not shew how he had the estate of I. P.

2. The Writ is, *Ad nocumentum liberi tenementi* I. P. and now of the Plaintiff, and counts to the Nuisance of the Plaintiff only, it is good, for the levying in the time of I. P. implyeth a Nuisance to him, and he must shew a Nuisance to himself to maintain the action.

3. If it appear to the Court, that the Nuisance is the damage of the plaintiff, he needs not shew it specially, as if the House of the Defendant hangeth over the House of the Plaintiff, as here, for it appeareth that the light was stopped, and that the rain descended: *Quod constat clare, non debet verificare*, and the Plaintiff may abate the Nuisance if he will: and the Statute of *westm. 2. c. 34.* which giveth the *Quod permittat* against the Alience of him who levyed the Nuisance, extends not to the Alience of the Alience.

The Poulters Case, fol. 33.

IF one were taken for the death of a man, he was notailable at the Common Law, without a Writ *De odio & acia*, which serveth not if he be appealed or indicted. 2. If he be found not guilty upon the said Writ, he was notailable without a Writ *De p-nendo in ballivum*. 3. A Writ of conspiracy lyeth not before acquittal, but the conspirators may be indicted or censured in the Star-Chamber. Confederacies punishable by Law before Execution, ought to have four incidents.

1. they must be declared by some manner of prosecution, as was in this Case.
2. they ought to be malicious and for revenge.
3. they ought to be false against an innocent.
4. they ought to be out of Court voluntarily.

Aldreds Case, 8 Jacobi, fol. 37.

WHEN a man hath Lawful profit by prescription of time, whereof the memory of man is not to the contrary, other custome of the like time also, cannot take the former away, for the one custome is as ancient as the other. As if a man have a way over the Lands of B. to his Freehold Land by prescription of time, B. cannot allege prescription or custome to stop the said way, for it may be, that before the time of memory the owner of the said Lands had granted such a way without any stopping, and so the prescription might have a lawful beginning. 29. El. Banco Regis.

Thomas Brand prescribed time out of memory to have the light of seven windowes towards a piece of Land of Thomas Mosely, in the City of York. but Mosely

Mosely erected a new building upon the said piece of Land, so neere, &c. as the light of the Windowes were stopped. *Brand* brought his Action on the Case; and judgement was given for the Plaintiff, for it might be, that before the time of Memory, the owner of that piece of Land did grant License to the owner of the Messuage, to have the said 7 Windowes without stopping them, and so the prescription might have a lawful beginning.

If a man have a watercourse to his House for necessary uses, if a Glover make a Lime pit for Calf-skins so neer the said course, that the corruption doth corrupt the same, an Action of the Case lyeth. 13. H. 8. 6. Likewise a man shall not make or erect a Swyne-sty so neer his Neighbours House, as to annoy him with the contagion thereof.

John Lambes case, 8 Jacobi, Star-Chamber, fol. 59.

It was resolved, that every one that shall be convicted in case of *Libelling*, ought to be either a contriver of the Libel, or a procurer of the contriver, or a malicious publisher thereof, knowing it to be a Libel; For if one read a Libel, or hear the same read, it is no publication, for before he hear or read the same, he cannot know the same to be a Libel, or if he read or hear the same, and laugh thereat, this is no publication; but if after he hath read or heard the same read, he repeat the same or any part thereof in the hearing of others, or if we write a Copy thereof, and doe not publish the same to others, this is no publication of the Libel, but it is good for him after he hath so written the same, to deliver it to a Magistrate, for then the act subsequent doth declare his intention precedent.

Robert Bradshawes Case, 10 Jacobi, fol. 60.

Lessor for six years during the life of R. Covenants that he had power to make this Lease, the Lessee brings Covenant, and sheweth not that R. was in life, nor what person had right, and yet good: because R. were not in life at the time of the Lease made, the Lease was absolute if he died after, yet the Action lyeth, and he needs not shew who had right, for he had pursued the words of the Covenant, and it lyeth not properly in his notice.

Mackallies Case, In killing of a Serjeant, &c. 9 Jac. fol. 65.

Five exceptions to the Indictment.

1. The Arrest was in the night, between five and six of the Clock, in November, at the sute of a Subject, which being tortious, the killing of the Serjeant is but Man-slaughter. *Non alloc.* 1. Because the Arrest may be at the sute of a Subject in the night.

2. Although that between five and six in November be in the night, yet the Court is not bound to take notice of it, without the shewing of the party, as in case of Burglary.

3. The Sunday is not *Dies juridicus*, therefore the Arrest that was made upon it was *Tortious*. Resolv. That judicial Acts shall not be done this day, but Ministerial may for necessity.

4. The Indictment is in *Computat. in parochia S. M.* in W. omitting the Ward, yet good, as if one name the Town, he is not bound to say in what Hundred it is, 4 and 5. the precept was to arrest him, *Intra libertates L.* and the arrest was in L. yet good, because the Liberties of L. includes the City of L. it self.

1. Exception to the Verdict, that the Indictment and the Verdict vary, for the Indictment is, that the arrest was by precept, and by Verdict it is found that it was by custome without precept. Answered, that the precept is but circumstance, and variance in that it is not material, having found the substance, as if the Indictment be, that he killed him with a Dagger, and it is found that it was with a sword, so if he be indicted of murder, and it is found manslaughter, this is good; for *Ex malitia* is but circumstance. 2. The Indictment may be general, *Ex malitia*, &c. because the Law implyeth malice, and so the precept not material. 2. The custome is not good, to arrest one without summons: it is good, and if the process be erroneous, yet killing of him who did execute it, is murder, because he is not to dispute whether it be good or not, and if any officer in doing his office be slain, this is murder, and in such a Case an officer is not bound to flye to the Wall, as another is. 3. The Arrest cannot be before the plaint entered of Record before the Sheriff. *Resp.* It may by the custome after entry of it into the Porters Book.

4. The Serjeant ought to shew at whose sute the Arrest is, and in what Court, and for what cause, true it is, if the party submit himself, but here he was killed before he could speak, and if they kill him before the Arrest, knowing that he came for that purpose, this is murder.

5. It is not found that the killing was felony. *Resp.* It is sufficient for the Jurors, to find the killing, which is the substance, and leave it to the Judgment of the Court if it be felony.

6. The Serjeant did not shew his Mace: He ought not.

1. Because he was commonly known.

2. The party arrested is to obey at his peril, and if

if shewing of the Mace be requisite, it will be a warning to the party to flie.

7. The arrest ought to be upon request after the plaint entered; the request may be before or after.

8. The verdict is repugnant, for they find that the plaint was entered of record, 17. Nov. and after they found that it was 19 Nov. this is more strong against the Prisoners, because the entry was before the arrest 18. Nov.

9. The Plaint is without form, this is not to the purpose, for it is but a remembrance to draw the count by at large after. And *Mackalley* and the other prisoners were executed at Tyborne.

Peacocks Case, 9 Jacobi, in Camera Stellata, fol. 70.

Sir George Reynell Plaintiff, Richard Peacock and others, Defendants, J. H. J. B. Commissioners to examine Peacock upon Inter. and Peacock being examined would have declared all the truth, but J. H. Commissioner for the Plaintiff, held him strictly to the Inter. so as the truth could not appear: and this was holden by the Lord Chancellour, and the two Chief Justices, the Chief Baron, and all the Court of Star-Chamber, a great misdemeanour, &c. as the Statute of Exeter saith, *Per quod justitia & veritas suffocantur*, and Commissioners to examine ought to be indifferent, and by all meanes to expose the Truth. And they are not bound strictly to the Letter of the Inter. but to every thing also that riseth necessarily for manifestation of the truth. And the said J. H. when he was in Examination of Peacock, went forth of the place to the Plaintiff, being in another Roome, and had secret conference with him: And it was holden by all the Court, that a Commissioner, before publication of the depositions, ought

not to discover to any of the parties the matter thereof, nor after that he beginneth to examine Inquiry, to conferr with the parties, to take new Instructions to examine further than he knew before; and if so be, they were great misdemeanours, and punishable by Fine and Imprisonment, for if such things should be suffered, perjury would abound. I. H. was forth of the Commission of the Peace, and the Attorney general was required to preferre an Information against him, for the said misdemeanours.

Doctor Husseys Case, 9 Jacobi, fol. 71.

IN Ravishment of ward against a Feme Covert, and others, they were found guilty, and the Baron *enclp*: and the Age of the Infant above sixteen, and Married: *Foster and warberton*, a Feme Covert within the Statute, because the Action lay at the common Law, and the Statute gives, but greater punishment, and so she is within the Statute of *Merton*, cap. 6. *De Malefactoribus in parais*, of forcible entry, and redisseisin. *Cooke and Wamsley* to the contrary: the Statute of *westm.* 2. cap. 35. hath made these alterations, this extends to Heirs Females, which the Statute of *Merton* did not. 2. It extends to Heirs Ravished after years of consent, so doth not the Statute of *Merton*. 3. It extends to the Clergie, the Statute of *M.* doth not. 4. *M.* giveth a right of Ward, this giveth ravishment of Ward. 5. This giveth more speedy proceffe, and the death of the Plaintiff or Defendant abateth not the Writ. 6. It giveth greater punishment. 2. A Feme Covert is not within this Statute, for it is *Si heredem maritaverit, & satisfacere non potuerit abjuret regnum*, or be perpetually imprisoned, and because the Law disableth the Feme to satisfie, she shall not therefore be exiled,

led, not perpetually imprisoned, and the Baron being innocent shall not be punished, for the punishment is personal, and he shall not have judgement at the Common Law, the Action being brought upon the Statute, nor judgement upon the Statute where the Action is brought at the Common Law. 3. The Verdict is insufficient, because no Case, within the Statute, except the Ravisher marry the Infant, so that if the Infant marry himself, or be married by another, it is out of the Statute, and the Verdict found that he was married, and did not say by whom. 4. Damages shall be recovered upon this Statute, and where the Statute saith, that he shall be banished, or perpetually imprisoned, the Election is in the Court.

Combes Case, 9 Jac. fol 75. Upon a special Verdict.

A Copy-holder in fee (where there is no custom to that purpose) maketh two his Attorneys, to surrender to the use of I. N. in fee, they in Court shew the Letter of Attorney, and by the said Letter of Attorney surrender.

1. Resolved, surrender by Letter of Attorney is good, for a surrender may be by the common Law without custome, and may be by Attorney as incident to it: If one have a bare authority, coupled with a confidence, he cannot do it by Attorney, as Executors cannot sell by Attorney, but if he had authority to dispose, as owner of the Land, he may, as *Cestuy que use*, by the Statute of 1 R. 3. if one had particular personal power to dispose, as owner of the Land, he cannot do it by Attorney, as if Lessee for life had power to make Leases for years: There are personal things which cannot be done by Attorney, as Homage, Fealty, beating his

Villein : admittance of him to whose use the surrender is made, may be by Attorney if the Lord will, and yet he may upon the admittance compel the Tenant to do fealty, *A fortiori* here : and otherwise would be a mischief, for it may be he is beyond Sea, or sick, and cannot be present, to surrender payment of his debts, or preferment of his Children, but if a custome be, that an Infant may make a settlement at 15 years, he cannot do it by Attor-

3. The Attorneys have pursued their Authority, although they have not done it in the name of the Authorizer, for they did shew the Letter of Attorney, and surrendered by authority thereof, which is one, but if it be to make a Lease by Indenture, this shall be in the name of him who gave the authority, but Executors must sell Land in their own name, for necessity, and yet the Vendee is in by the Devisor.

Henry Peytoes Case, 9 Jacobi, Com. Banc. fol. 77.

It was resolved, *Per tot. curiam*, that accord in all Actions, wherein is supposed the Tort to be made (*ex armis*) where *cap.* and the exigent lyeth at Common Law, is a good Plea, as in Trespass, and *Ejectione firme*, detinue of Charters, house, or other goods, for where the certainty is to be recovered an Action is a good plea, when the condition in a Debt by the Original contracts of the parties, is to pay money, yet by accord and agreement between the parties, any other thing may be given in satisfaction of the money, *Res per pecuniam estimatur & non pecunia per rem*. And in this sense the saying is true *Quod pecunie obediunt omnia*.

Every

Every Accord ought to be plain, perfect, and compleat, for if diverse things are to be observed and performed by the accord, the performance of part is not sufficient, 17. E. 4. 2. & 6. H. 7. 10. P. com. 5.

If a man be bound in an obligation, in one hundred Quarters of Wheat, upon condition to pay Quarters, he cannot give money or other thing in satisfaction thereof, because the contract Original was not for money, but for a collateral thing.

Also if the things to be performed be at a day to come, tender and refusal is not sufficient without actual satisfaction and acceptance.

If a man be bound in a Statute, Recognizance, or Obligation, and after a defeasance is made to pay less Sum, now this Sum in the defeasance is collateral, and therefore if the Obligor tender the same at the day, and it is refused, the Obligee shall have the same for ever, as is holden in 33. H. 6. fol. 2. yet in this Case, the Obligor by accord between the parties may give any Horse or other thing in satisfaction of the money in the defeasance, for the Contract originally was for money. But if a man be bound in a Contract or Assumpsit without Deed be to deliver an Horse, or to build an House, or to doe any collateral thing, money may be paid by accord, in satisfaction of such contract, for as a contract in consideration may commence by word, so by accord, by words for any valuable consideration, the same may be dissolved.

Agnes Gores Case, 9 Jacobi, fol. 81.

Herein was resolved, that if A. put poison into a Pot, to the intent to poyson B. and let the same in a place where she supposeth B. will come, and drink thereof, and by accident one C. unto whom A. had no malice, commeth, and of his owne will, taketh the Pot and drinketh thereof, of which poyson he dyeth, this is murder in A. for the Law coupleth the event with the intention, and the end with the cause. But if one prepare Rats-Bane to kill Rats or Mice, and lay the same in certain hidden places to this purpose, and with no ill intent, and another person finding the same doth eat thereof and dyeth, this is no Felony, but when one prepareth poyson with a felonious intent to kill any reasonable Creature, whatsoever reasonable Creature is killed thereby, he that had the felonious intent shall be punished. Resolved by all the Justices of England.

coney case, 9 Jacobi, fol. 84. in banco.

The Lord of a mannor, and Tenant within the age of 21. years by Fealty and rent, the Lord inoffeth a Stranger, to which feoffment the Tenant attourneth. Question, whether the attournement of an Infant will bind him to the payment of the services or not, and by *Cooke, walmesley, warborton, and Fether*, it shall bind, for he is compellable in a *Per que servitia*, and shall not have his age, but he may avoid any prejudice thereby at his full age: and if a fine here had been levied, he had been compellable: and the rather, because it is but a bare assent.

Pinchons

Pinchons Case, 9 Jacobi, fol. 86.

IT was adjudged, that an Action of the Case, will lye against Executors, for a Debt due by the Testator upon a simple contract. An action upon Assumpsit, made by the Testator, was maintainable, against the Executors, upon a contract for Corn. *Norwood and Reades Case, Plow. com. 181.*

Debts upon simple contracts ought to be paid before Legacies, and reasonable part of the goods of the Wife or Infant, which proveth that they still remain; the Spiritual Court doth give remedy for payment of Legacies; and the reason of all this is, for that the Testator in his life time, upon his action of the case upon the *assumpsit*, might not wage his Law, as he might have done upon his action of debt, for no action is maintainable against executors, where the Testator might have waged his Law in his life time: If a Prisoner do eat and drink with his Gaoler and dye, the Gaoler shall have an action of debt against his Executors, for the meat and drink of the Testator; and the reason is, for that in this Case the Testator might not wage his Law, as is adjudged, 27 H. 6. fol. 46. in *Thomas Bodulgates Case*, and the reason that no wager of Law in this Case is, because that every Gaoler ought to keep his Prisoner in *salva & arcta custodia*, and thereby the Gaoler is in a manner compelled to find Victuals for his Prisoners, and therefore the Prisoner may not wage his Law; but if A. contract with B. for his commons for a month, &c. there, in an Action of debt brought against A. he may wage Law.

If a Victualer, or common Inne-keeper bring an action of debt for victuals delivered to his Guest, the Guest may wage his Law, for the Victualler, or Host,

is not compellable to deliver Viſtualls until he be paid for them in hand, 10. H. 7. 8. in Anno 4. H. 6. G. brought an Action of Debt for 10 Markes against *Thomas Timberhull*, and others, Executors of *William Webb*, and declared, that the Testator had de-
 clared the Plaintiff to be with him for a year in the art of Limming of Books, paying *per annum* ten Markes: And *Martin* did hold opinion, that the Action was not maintainable against Executors, and he
 drew a diversity between this Case of a Limmer, and of a common Labourer, for the Labourer may be com-
 pelled in spite of his head to serve, and his wage is in certainty by the Statute, and it is no reason
 a Servant should lose his wages by the death of a Master, whom he was bound by the Law to
 serve, but in case of a Limmer, he is not bound by the Law to serve, & so when he makes a Covenant it is
 his own Act and folly, and not the Act of the Law, and
 he might have taken a specialty, and the opinion of
Martin in this Case, is good Law: But the true
 reason of this diversity, is, because that in this case
 of the common labourer, the Testator might not
 give him his Law as he might against a Limmer, and
 it appeareth in 11. H. 6. fol. 43. where the Gardi-
 an of *Freres Minors* in *Coventry*, brought an Action
 of Debt against *John Burton* of *Coventry*, Executor of
John Goate, and declared that the said *John Goate* re-
 sided at *Coventry* *Frere John Bredon*, a Brother of the
 House by Licence of the said Gardian to Sing
 him Masses for one whole year, and to say Saint
Gregories Trenrals in the next year after, and shewed
 a certainty upon what services Saint *Gregories* Tren-
 rals did consist, taking for this, xl s. *per annum*, and
 within four dayes *John Goate* dyed, and the Defen-
 dant his Executor, and the said *John Burton*, granted
 to the said *Frere* to pay him the said Sum, for

doing the said services according to the Retainer of the Testator, which divine services the Frere did perform according to the retainer, and all his wages were Arrears. And in this case the diversity was taken that a labourer may have an action of debt against Executors, without specialty, because that he may be compelled to serve by the Statute, and the Testator shall not wage his Law in this Case. But the Priest or Frere is not bound to Sing Masses, by the Law, against will. And in every case where the Testator might have waged his Law, the action is not maintainable against his executors without specialty, for Executors may not wage the Law upon the contract of another. In 2. H. 4. f. 16. *Lawr.* Saint Martin retained one for term of his life, in the time of peace and wars, *per annum*, which service he (as his servant) did do two years, for which he brought his action of debt against John Belton, and others, Executors of the *Lawr.* And judgement was given against the Plaintiff, for the reason, and upon the same diversity, as aforesaid; an *Assumpsit* without specialty is no more personal then a Covenant by specialty, and therefore dyeth not with the person.

William Banes Case, In Ban. Re. 9 Jac. fol. 93.

VPon an Action of *Assumpsit* against Executors the Plaintiff needeth not to averr, that the Executors have assets in their hands of the goods of the Testator, to the value of the said debt, for it shall be intended *Prima facie*, that they have Assets, for the Law doth presume, that the Testator will not leave a greater charge upon his Executors, then he will leave next to discharge.

If a Stranger do say unto a man to whom a Debt owing, I pray you forbear your debt, and do not

the Party until Michaelmas, &c. and then I will pay you the Debt. This is a good consideration, although it be no benefit to him that made the promise for it; It is a damage to the Creditor to forbear his sure or debt; he may have his Action of *Assumpsit* against such a stranger after the day.

Sir George Reynels Case, 9 Jacobi, fol. 99.

In Chancery.

It was found by office, by Commission under the great Seal, that the Marshal of the Kings Bench had committed diverse Forfeitures of his Office, by suffering voluntary escapes of Prisoners; That Office, and such like may not be granted for years, because it is an office of trust, and personal, and he must continually attend, and be Sworn in Court.

Two matters of Record amount to an office, as in the Case of Sir John Savage, who was Sheriff of the County of Worcester for life, by Letters Patents under the Great Seal, and was Indicted of two voluntary escapes of Felons; and the King may seize his Office into his own hands, without suing forth any *Scire Facias*, 5. Mar. Dyer. The Abbot of Saint Albanes, had a Gaol, and detained prisoners therein, and because he would not be at charges to sue forth Commission for the Gaol delivery, the King caused his Franchise and liberte thereof to be seized into his own hands.

The Abbey of Crowland had a Gaol and Prisoners, and for that he once detained men that were quit of felony, the King resealed the Gaol for ever.

If a man grant an Office to an other for life, or for years, and he will not doe his Office, or otherwise refuse his Office, the Grantor may resealed the said Office. 39. H. 6. fol. 134.

If a Gaoler commit voluntary escapes, or permit them, this is a forfeiture of his office, Cooke, Lib. in the Countess of Salops Case.

The King may grant the custody of the Gaol one in Fee, and also to the Sheriff of a County, one, and his Heirs, which estate in fee simple, includes all other estates, and it is true, that these grants may be made by Law, for in these cases there is not any permission, for presently after the death of the Ancestor the Office descends to the Heir.

2. This Office cannot be forfeited by Outlawry, if it were granted for yeares, it might; grants of these Offices in fee, or for life, have been allowed and approved, but such grants for years were never allowed or approved, *Et periculosum existimò quod in norum virorum non comprobatur exemplo*: he that has the custody of the Gaol, whether by right or wrong shall be charged with escapes of Prisoners until he be actually removed:

Margaret Podgers Case, 10 Jacobi, fol. 104.

I. P. Copyholder for life, the remainder for life the Lord bargained and sold, and levied a fine to I. P. this descended to M. P. who levied a fine five years past without claim of them in remainder adjudged no bar.

1. Resolved, that Copy-hold estates are within H. 7. by the word *Interest*, but if the word be by covenant, this barreth not the issue; if Lessor for years, Copy-holder be ousted, the Lord shall not have five years after a fine levied by the disseisor, after the estate determined, because he may presently have a writ of assize, otherwise where Lessor for life is ousted, a stranger cannot enter to avoid a fine without Commandement, or assent of the party who has right.

light, but a Gardian in socage, or Lessor for life, or Lord of a Copy-holder, may, for the privity between them, and the Infant or Lessee.

1. A Fine barreth not any by Non-claim who is put to a right, therefore here they in remainder are not barred, because the bargain and sale, and fine to the Tenant in possession putteth them not to right.

2. Because it is lawful act.

3. Tenant in possession devesteth not the remainder by acceptance, as if Lessee for life accept a fine, the fee, although it be a forfeitured.

4. Because he is in by 27. H. 8. obuses which doth wrong.

5. After the bargain and sale he in the next remainder shall not enter, for by the custome his estate is to commence after the death of the Tenant in possession, so if Tenant in possession forfeit, the Lord and not he in remainder shall enter, but thereby without a special custome the remainder is not destroyed: If a Copy-holder in fee surrenders to the use of one for life, no more passeth then serveth the estate limited, and he shall pay no fine for admittance after the death of Tenant for life: It seemed to the Chief Justice, that if the Lord here had charged the Land, I. P. shall not hold it charged, for the estates in remainder preserve him from incumbrances of the Lord.

Mariel Treshams Case, 10 Jac. Com. Bar.

fol. 108.

AN Administratrix, Defendant in Debt pleads that the Testator and his Son acknowledged a recognizance to the King, of a hundred pound, and another of 800 l. to B. and another of a 1000 l. to

A 3.

M. and

M. and divers others, over and about which she had not assents, and after said she had not sufficient assents, the Plaintiff replyeth, that the recognizance to B. was for payment of 400^l. which is paid, and the other to M. is to perform Covenants, whereof none is broken; and the recognizance remaineth in force by covin of the Defendant.

1. Resolved, that the bar is insufficient, for she confesseth that she had sufficient assents to pay the said recognizances, and after denyeth.

2. She said she had assents, but not sufficient, this is too general, but she must confess how much she had, because she had knowledge thereof.

3. The pleading by the Plaintiff, that the Obligation was made to perform Covenants, is good without more certainty, because he is a Stranger.

4. The general allegation of Covin is good, without shewing of refusal to release, &c. and fraud may be in one only, also the bar is insufficient, because the intestate was bound in the recognizances, with another, and the Defendant had not averred, that the other had not satisfied them.

Robert Marys Case, 10. Jac. fo. 111.

A Commoner being a Copy-holder brings an action upon the Case, for putting Beasts into the common, whereby he lost his common, the Jury found that the defendant did not put in the beasts, but they of themselves depastured there.

1. The Jury have found the substance of the issue for the Plaintiff, the depasturing there, and it is not material if he put them not there.

2. This Action lyeth, for the Commoner, for he may distrain damage feasant, and it may be, that with strong hand he is hindered to distrain, and so

if

he shall not have this Action he is remediless.

2. A Commoner, who had freehold in the common shall have an Affize, *Ergo*, a Copy holder shall have this Action.

3. The wrong ought to be so great, that the commoner lose his Common, as a Master shall not have an action for beating his Servant without loss of his service, and it appeareth not to the Court that there are more Commoners than he, and if there be, yet an action lyeth, because each had private damage, and it is not like to a Common Nufans, which shall be punishable only in a Leet, if there be not special damage, but be the Trespass never so little, the Lord may have an action of Trespass.

The Lord Sanchers Case, 10 Jacobi, fol. 117.

For procuring the Murder of John Turner, Master of Defence.

RESolved, That a Baron of Scotland shall be tried by Commons of England.

2. The Indictment of the accessory in one County to a Felony in another Country, by the Statute of E. 6. c. 24. shall recite, that the felony was done in the other County, for an indictment is no direct affirmation of the fact.

3. The Justices of the Kings Bench are within these words of the Statute, Justices of Gaol delivery, or Oyer and Terminer, for they are the Supream Judges of Gaol delivery.

4. The Lord Sancher cannot be in the Term-time Arraigned in *Midd*, before Justices of Oyer and Terminer, because Justices of Oyer and Terminer shall not sit in the same County where the Kings Bench is, but the principals were Arraigned in *L.* in the Term-

time, because this is another County.

5. There needs not be 15. dayes for the return of the *Venire facias*, upon an indictment in the same County where the Kings Bench is, otherwise in another County.

6. Because there is no direct proof that the Lord S. commanded one of the principals, but that he associated himself to one who was commanded, the best way is to arraign him as accessory, to him whom he commanded, but if he be indicted as accessory to two, and found accessory to one of them, this is good.

The word appeal in the Statute of *W. 1. c. 14.* is to be intended generally, (*Viz.*) by indictment, Writ or Bill, &c. and attainders is to be intended upon any such accusation, *Ergo*, if upon any such accusation the principal be attainted erroneously, the accessory may be arraigned, because the attainder is good until it be reversed, but if the Accessory be Hanged, and after the Attainder against the principal is reversed, the Heir of the Accessory shall be restored to all which his Father lost, either by entry or Action: By *5. H. 4. cap. 10.* none shall be imprisoned by Justices of Peace, but in the Common Gaols, whereby it appears that Justices of Peace offend, who commit Felons to the Counters in L. and other Prisons, which are not common Gaols.

Cases in the Court of Wards.

Anthony Lowes Case, 7 Jacobi, fol. 122.

A. L. Tenant of 59. Acres, parcel of the Mannor of A. by Chivalry, and Sue of Court to B. whereof A. was parcel, and both A. and B. were par-

parcel of the Dutchie of L. out of the County Palatine holden formerly of the King in Chivalry, in *Ca-*
te, and of another House there, holden of A. by
fealty, and rent, H. 8. grants the rent by release to
him, and confirmeth his estate of the said Lands by
fealty only, and grants to him the Mannor of A. *Te-*
nodum by fealty and rent: It was Objected, that
when the King grants the Seigniorie to his Tenant,
the ancient Seigniorie is extinct, and a new one that
best for the King created, (*Viz.*) Chivalry. 2.
When he extinguisheth services parcel of the Man-
nor of A. — this shall be holden as the Mannor of A.
this is by Chivalry.

But resolved, that the 59. acres and house, shall
be holden by fealty only, and as to the said Objec-
tion the release of the King doth not extinguish ser-
vices, which is inseperable to a Tenure that is fealty,
as all others are gone, and true it is, when the King
grants and expresseth no Tenure it shall be by Chi-
valry, but when the Land moveth from a Subject, and
the Tenure is changed, the new Tenure shall be as
the ancient as may be, as feoffee of Tenant in
tail *in* *almoigne*, shall hold by fealty only, and here,
though they grant the services, yet he limits the
tenure to doe fealty. A Knights fee is not to be ta-
ken according to the quantity, but the value of the
land, as 20 *l.* *per annum*, and a Hide of Land, is
as much as a Plough can Plough in a year; Relief
the fourth part of the annual value; that is, of a
Knight, five pound; of a Baron, a 100 Marks; of an
Earl, 100 *l.* of a Marquess, 200. Marks; of a Duke
100 *l.* The Eldest Son of E. 3. called the black
Prince, was the first Duke in England, Robert, Earl
of Oxford, in the Reign of R. 2. was the first Mar-
quess, and the Lord Beaumont was the first Viscount
created by K. H. 6.

Floyers Case, 8 Jac. fol. 125.

Baron and Feme seized of lands holden in Chivalry in the right of the Feme in fee, levy a Fine to one who grants and renders to them and the heirs of the Baron, and levy another Fine to their use for life, the remainder to their three Sons in tail, one after another; the remainder in fee to the Heirs of the Baron; the King shall have neither Wardship of body nor Land.

1. Resol. That is out of the Statute of 32 H. 8, cap. 12, if he who had the fee dye, &c. in respect the estate by the first fine did not continue, and this although both the conveyances are voluntary.

2. The King shall not have wardship of the third part, because it is not for advancement of the Wife for in the first Fine the Land moved from her, and she had no more by the second Fine than by the first.

3. In regard of the particular estate is out of the Statute, no wardship accrueth to the King, by advancement of him in the remainder; but if a reversioner upon an estate for life, convey to the use of his wife, this will give wardship of the body of the heir for he in reversion is Tenant; if a Lease for life, the remainder to two, and to the Heirs of one, who hath the fee dieth, his Heir shall not be in Ward; if the heir of one Joint-tenant, who had the fee dyed in full age (living the Tenant for life) his heir shall be in Ward, although he be within age by that Statute, because he is not immediate heir.

Soddayes Case, 8 Jac. fol. 127.

M. S. deviseth to his wife for life, the remainder to W. S. and if he shall have issue, that then his issue shall have it, the remainder to S. the remainder to T. &c. *Totidem verbis*, upon condition that any of them, or the Heirs of their bodies, go about to alien, that he in the next remainder to enter after the death of M. W. and S. T. suffereth in a common recovery to his own use in fee, he the next remainder enters.

1. Resolved, every one of the Sons hath an estate in fee. 1. These words if he dye without issue male, are sufficient to create an estate tail. 2. The general issue, if any of his Sons, or heirs of his body do make it manifest. 3. The condition proveth void for they cannot alien if they have but for life, for it would be a forfeiture.

1. The restraint of the Tenant in tail, to suffer a common recovery is void; See *Mildmayes Case* in the 10th Book.

Quicks Case, 9 Jacobi, fol. 829.

The King Lord, I. N. and Tho. Q. mesnes of a Mannor which they hold in common in *Capite*, &c. Grant of three Acres holden in Chivalry, T. Q. maketh a feoffment of his moiety to the use of himself for life, the remainder to I. Q. his Son in tail, the remainder to I. Q. who infeoffeth T. Q. to defraud I. N. of the wardship of his Son within age, and I. N. seisseth the son, T. Q. dyeth, the King shall have wardship of the body, and moiety of the three acres.

1. Resolved, By the death of I. Q. it was a Chattel vested.

vested in I. N. and the King had but a possibility to have it, if T. Q. die during the minority of the ward, which possibility shall not devest the wardship out of I. N.

2. When the Tenant infeofeth a stranger to defraud the Lord of wardship, the Lord shall not have ravishment of Ward, before recovery of the Land in the right of ward, and although the title of I. N. be but in action, yet it shall not be devested by a descent after: See the Statute of 34. H. 8. in Case of collusion.

Bewleys Case, 9 Jacobi, fol. 130.

THE King Lord, mesne by socage, and tenant, the tenant is attainted of Treason, the King grants to one *tenendum* by Chivalry and Rent, and to his services to other Lords, the Tenant shall hold by Socage of the Mesne, and he by Socage of the King, because the intent of the King was to revive the mesnalty, which cannot be by any other way, and the reviving of the ancient tenure shall be a construction preferred before the reservation of a new; and the honour of the King shall be preferred before his profit, and there was no default in the Mesne.

Thomas Holts Case, 9 Jacobi, fol. 131.

Grandfather tenant in Chivalry in Capite, Father and Son, the Grandfather conveyeth part of his Lands to the use of the Father and his Wife, the remainder to the Son in tail, &c. the remainder to the right heirs of the Grandfather, and conveys other Lands to his younger Children for life, with

verse remainders over, and dyeth, the Father renders livery, and before he sueth it dyeth.

1. Resol. By the death of his Father before livery made, and after tender, the King loseth the primer seisin, but not mean rates, if any be due.

2. The Son shall not pay primer seisin, nor sue livery, because the Father and not he, was within the Statute of 32. H. 8.

3. If the King had had one primer seisin, he shall not have another of the lands conveyed to the younger Children, but that ought to be an effectual seisin; *hys*, here, because the King had not the effect of the primer seisin of the Father, he shall have primer seisin of the Lands conveyed to the younger children, as if he had the grant of a prochein avoidance and presents, and the Clerk dyeth before Induction, he shall present again, and before the Statute of Donis: as a Tenant in tail the reversion to the King had alieneed *post prolem suscitata*, with warranty which descends upon the King, it is no bar without assents, the effect of the warranty.

4. The King shall not have primer seisin in regard to a secke reversion which descends to the Son, otherwise if a rent be reserved, the King may have that for a year: So note for a fruitlesse reversion there shall be wardship, but no primer seisin.

Matthew Menes Case, 9 Jacobi, fol. 133.

Tenant of the King of a Messuage in Capite, who holds other Gavel-kind Land, deviseth all to his Sons equally; 1. Whether the King shall have a third part of a Messuage only; 2. Whether out of the part of the heir only; because the *Prærogativa Regis*, cap. 1. *Rex habebit, &c. de quocunque tenuerint*, &c. is intended, if the Land descend to the same heir

heir to whom the Land holden did descend.

1. Resolved, if no Will had been made, the King shall not have the Lands, holden of others in socage, but when by the Will, (to which he is inabled by Statute) he deviseth it to his Sons, here the saving 32. H. 8. giveth to the King Ward and primer seisin. So if Lands in chivalry, devisable by custome, are devised to the Feme, although the devisee be good, for all without aid of the Statute, yet the King shall have the Wardship of a third part.

2. The King shall have his third part out of all their Estates equally.

Ascoughs Case, 9 Jacobi, fol. 134.

THe King Lord, Mesne in *Capite*, and Tenant in socage, the Mesne grants to the use of himself for life, the remainder to the Tenant in Tail, if the remainder suspends the Mesnalty during the life of the Mesne.

Resolved, That during his life the Mesnalty is not suspended. 1. not as to the Mesne, because he remaineth Tenant to the Lord, nor by reason of the remainder, for the avoiding of fractions; otherwise if the remainder be limited in fee, for then he hath as high an estate in the Mesnalty, as in the Tenancy, and this can never be revived, and otherwise a Seigniorie in fee shall issue out of a Mesnalty for life, and there will be the Lord and Tenant in fee, and Mesne for life: but if the Lord Grant his Seigniorie for years, the remainder for life to the Tenant, the Mesnalty is suspended: a Mesnalty or Seigniorie cannot be suspended in part, and in *esse*, for part by the Act of the party, but they may by Act of Law, or of a third party: As if the Lord take a Lease of part of the Tenants, all the Seigniorie is suspended, but

A Gardian indow the feme the Seigniorie is in esse, for that part, and suspended for the residue: If two Coparceners are of a Seigniorie, and one cometh to the Tenancy by defeasible Title, the other shall diminish for the moiety of the Seigniorie, and the Act of the Coparceners shall not prejudice her.

There are four manner of Avowries.

1. Upon his very Tenant.
2. Upon his very Tenant by the manner, where the Tenant had but a particular estate.
3. Upon his Tenant by the manner when the Lord had put a particular estate.
4. Upon the matter in the Land, as within his fee, but the Lord hath liberty to Avow according to the Common Law.

Throughgoods Case, 9 Jacobi, fol. 136.

TENANT in fee infeoffeth one by Deed indented, and delivereth it upon the Land, in the name of seisin, this is good, and hath a double operation at an instant, viz. to deliver the writing as a Deed, and to deliver seisin of the Land according to the Deed.

1. Resolved, this is his Deed although he doth not say so, but delivers it in the name of seisin, for delivery is good without any word: if one deliver a deed to one as an escrow, to be his Deed upon performance of condition, this is his Deed presently, otherwise if he deliver it to a stranger: so words are good without actual delivery, as if he saith, take it to a livery within view. If the Obligee deliver the Obligation to the Obligor, to deliver, the Obligor may retain it, for the words to redeliver are void.

2. Delivery of the Deed upon the Land, amounteth

eth not to livery and seisin, but it doth, if delivered in the name of seisin, so of any other thing, or if he saith, I deliver you seisin, without delivering any thing, this is good also.

Beaumonts Case, 10 Jacobi, fol. 138.

I. B. and E. his Wife. Tenants in special Taile, the remainder to the Heirs of the Baron, I. B. levies a Fine to K. E. 6. who grants to the Earl of H. in fee. I. B. dyeth, E. enters, the Earl of H. confirms her estate, to have to her, and the Heirs of the body of I. B. E. dyeth seised, having issue F. B. who accepts a fine, *Sur conusans de droit tantum*, with Proclamations, and dies, having issue Sir H. and I. Sir H. in Ward to the King after full age, and before livery, Covenanteth to stand seised to the use of himself, and his Heirs Males of his body, and dyes, having issue only a daughter in Ward, whether she or I. B. shall have the Land, &c.

1. Resolved, that E. had an estate taile, and the Statute of 8. H. 7. c. 24. which enableth the Baron to barr the issue, saveth the right of the Feme if she enter, or &c. and one may have an estate taile which cannot descend, as if the Son in the life of the Father levyeth a Fine, the Father remaineth Tenant in taile still, although it cannot descend, and E. here hath an estate taile so long as she liveth, or the Heirs in taile remain.

2. The confirmation is void, for he who did confirm had but a possibility, which passeth not by the confirmation, and if he had a reversion in fee, yet it should be voyd.

1. Because the taile which the Feme had was confirmed, which cannot descend.

2. The confirmation doth not add a descendible quality.

9. *Qualiry*, where he who should have it is disabled to
give by descent.

10. This would in effect repeal 4 H. 7: & 32 H.
two of the principal Pillars of the Law.

11. & 12. If Tenant in Dower grants her estate,
there is a descendible qualiry in the heir, to bring
suit against Tenant in Dower, and although the
heir confirm her estate for life, and after she assign-
eth it to I. S. who committeth waste, yet the action
of waste is mainrainable against her, *Par ratione*,
as the Case at Barre, in regard the confirmation doth
not enlarge the estate of E. it cannot adde unto it a
descendible qualiry.

13. There are but three manner of Confirmations,
Perficiens, Crescens, aut Diminuens, and the Con-
firmation in this Case, is none of them: and if E. had
power to levy a fine, or suffer recovery, the rea-
son is, because she cannot barr that which was barred
before by her Husband, but this point was not now
a Question.

The End of the Ninth Book.



大正

3.
8, r
4.
ain
n; o
ead
the

THE TENTH BOOK.

The Case of Suttons Hospital, Baxter Plaintiff, Sutton and Law Defendants, in Trespass, in the Kings Bench, and adjourned into the Exchequer Chamber; and judgement given against the Plaintiff.

I Object.

By the Parliament *Et* the Hospital was founded at *H. in Essex, Ergo*, the Incorporation made after by the Kings Letters Patents, is void, and the *Charterhouse* is not given by the said Statute, because *S.* purchased it after.

S. Sutton who had licence to found an Hospital before the foundation dyed.

3. The K. cannot name the House and Lands of *S.* to be an Hospital, because in *Alieno solo*.

4. Every Corporation ought to have a place certain, but here the License is to found an Hospital, or in the *Charterhouse*, *Ergo*, before that *S.* had made it certain, there was no incorporation, also the place of Corporation ought to be certain by

Meates and Bounds, and a place known will not serve.

5. The King intended to make an incorporation presently, which cannot be before that S. name

6. Governours cannot be, untill there be poor in the Hospital. Ergo, S. calleth it in his Will, his intended Hospital.

7. The Foundation cannot be without the words, *Funda, Ergo, &c.* and before such Foundation, a Stranger cannot give Lands unto it.

8. The Master was named at will, where he ought to be for life, and have freehold in the Land, also the Hospital must be Bounded before a Master be named.

9. The bargain and sale made by S. is void.

1. Because the money paid by the Governours in their private capacity, shall not inure to them in their politick capacity.

2. The *Habendum* is to them upon trust, which cannot be in a corporation.

3. Because as before no Hospital was Bounded.

10. The King cannot make Governours of a thing not in *Esse*.

To the first it was answered, that the Letters Patents recite the preamble of the Act, whereby, in many parts of the Act, it appeareth that the incorporation was to be *in futuro*, when it shall be created, and the Statute doth not give any Lands unto it, nor power to give without License of alienation and mortmain, and it appeareth by the Letters Patents, that the erection precedes the License.

2. The License is to him, his Heirs, Executors, &c. at any time hereafter, and the words of incorporation are in the present, and so the incorporation precedeth the execution of this License.

3. Although the King gave the name, yet S. devised it, and assented to it, and the K. did it at his desire.

4. The K. makes an Hospital of all the premises, that it is certain, and as to that which was said, that a place uncertain cannot be an Hospital; it is answered, that a Mannor may be, which is more uncertain than the *Charterhouse*. To the essence of a Corporation five things are requisite. 1. Lawfull authority to incorporate, and that may be four ways by the common Law, as the King himself by authority of Parliament, by the K. Charter, and by prescription. 2. The persons either natural or political. 3. A name by which, &c. 4. A place. 5. Words sufficient, but not restrained to a strict sense.

5. A Corporation may be without head, as if the K. incorporate a Town, and give to them power to choose a Major, they are a Corporation before Election.

6. It is a sufficient incorporation, that there be an Hospital *potestate*, for the Temple was a Corporation in the time of H. 1. and yet was not built till H. 2. time; but here the House was built before.

7. The first Donor is in Law the Founder, and the K. giveth a name, and designs the place and the persons, the Founder hath nothing to do to the donation; but if the K. leaveth the nomination to the party, there many times, although not necessarily he useth the words, *Fundo, Erigo, &c.* But truth the incorporation is made by the K. Charter, and the Founder is but an Instrument.

8. The Master may be at will; for by the Letters patents S. had power to name one at his will and pleasure.

9. The money paid by some of the Governours in

their private Capacity is good, but the payment was as Governours, and so they are acquitted. 2. A rent was reserved, which is a good consideration. 3. A bargain and sale may be upon confidence and trust.

10. They may plead that they are seised *in jure incorporationis*, although then it be not *In esse*. In answer to the presidents, some are Explanatory, some Nugatory, *Ex consuetudine Clericorum*.

Sir Thomas Fleming Chief Iustice of England became sick, whereof he after dyed, so that he never argued the Case: See there is several advancements and commendations.

Mary Portingtons Case, 11 Jacobi. fol. 35.

AFTER many things said concerning Perpetuities, in this Case it was said, that a recovery in a value barreth an estate tayl, although no recompence be had, because it is by Iudgement, as if issue in tayl be barren in a formedon, by warranty and assets, but if the issue before judgement given, alien the assets, his issue shall recover the land in tayl, if Tenant in tayl suffer a recovery, and dye before Execution issue is barred: It is absurd that one may barre one of going about to suffer a recovery, when he cannot barre the recovery it self; but if such a condition had been good, a Feme Covert by that shall not lose her Land; for she shall not lose her Land by any conclusion without examination upon Writ in Court and if she acknowledge a recognizance, this is void although it be with her Husband, because there is no Writ to examine her; if an Infant levy a fine, this is voidable, and shall be tryed by inspection, but a fine levied by a Feme Covert is void, if the Husband enter, otherwise not.

Jennings

Jennings Case, 38 Eliz. Banco Regis. fol. 43.

Tenant for life suffers a common recovery, in which he in remainder in tayl is vouched, who dieth, the reversion in fee is barred.

1. Resolved, that at the common Law a recovery against Tenant for life, upon a true warranty, and recovery in value binds him in the remainder.

2. No Statute was made to provide for him, who had a reversion or remainder upon an estate tayl, and the Statute of *W. 2. c. 3.* which giveth receipt to a reversioner upon default of him who holds *Per donum*, to be intended of Tenant after possibility of issue extinct, and *32 H. 8. c. 31.* provides only for a reversion or remainder upon a Lease for life,

3. There have been divers evasions out of the Statute of *32 H. 8.* as if Lessee for life Lease for years to one who infeoffeth one, who in recovery vouches Lessee for life, this was out of the Statute, because the Lessor and Lessee were put to a right, whereupon *14 H. 8. c. 8.* was made.

4. *14 Eliz.* extends not where Lessee for life voucheth him in remainder in tayl, because it is in the power of him in remainder to dock the reversion, &c. and the course is, that Tenant in tayl bargains and sells to one who suffers a recovery, in which, Tenant in tayl is vouched, and yet the bargainee had but for a Judgement affirmed in Error.

Lampets Case 10 Jacobi. fol. 46.

Lessee for 5000 years deviseh for life to one whom he makes Executor, the remainder to one daughter, and the heirs of her body, and dies, the Sister taketh Husband, they release to the Executor,

B b 4

who

who demiseth for ten years to the Defendant, the Baron dies, the Executor dies, the Feme takes another Baron, who demises to the Plaintiff, judgement against the Plaintiff.

1. Resolved, a devise of the use of a term to one for life, the remainder to another for life, is good, as an Executory devise.

2. A devise of the term it self in such manner is good.

3. The first Devisee cannot barre him who had the Executory devisee.

4. Assent of the Executor to the first devisee, is assent for all,

5. If such a devise be made to the Executor, and he enter, generally he shall have it as Executor.

6. Such an Executory devise cannot be granted over.

7. Such an Executory devise may be extinguished by release to the first devisee.

Object. That the first devisee had all the interest in him, and the other but a possibility, which cannot be released, as if Conusee of a Statute release his right in the Land, yet he may sue Execution.

It was answered, that a thing in action cannot be granted to a Stranger, neither by the Act of the party, nor of Law, but it may be released to the Tenant, and here to him who had the present interest.

1. Because as it may be easily created, being a Chancery, so it may be easily determined. 2. Every right as well present as future, by joyning all who have interest one way or other may be extinguish'd, so the Executor and the Sister here, had joyned in assignment, this had been good. 3. When many things are requisite to the perfection of any thing, the Law respects the Original Act, and here the fundamental Acts were the devise, death of the devisee.

the assent of the Executor, and death of the first devisee, and she hath a right that may be released, and the death of the Executor is but a mean to bring it into possession; as a Feme Covert barreth her self of Dower by joyning in a Fine with her Husband, but if the Baron sole levy a fine, and dyeth, and five years passe, the feme is not bound; so if Tenant in ancient demesne levy a fine, he had possibility to have the land again, if the Lord bring a Writ of deceit; but he may release that possibility, but such a possibility as may be released, ought to be *Propinqua*, and not *Remota*, and it is more than a common possibility, that an Executor will die before 3000 years, and the person who releaseth it ought to have it in certain; therefore if a remainder be limited to the right heirs of I. S. his eldest sonne cannot release it, because he is not certain whether he shall be heir at the death of his Father, so if a Lease be made to Baron and Feme, the remainder to the survivor of them for 21 years, the Baron cannot grant this term. 4. This by her death goeth to her Executor, therefore it may be extinguished by her, if the disseisee release all actions to the disseisor, who dyes, the disseisee shall have a Writ of entry against his Heir, or if Bailor release all Actions to the Bailee, he shall have a detinue against his Executors. 5. It is a present Legacy, although the interest be *in futuro*, and therefore the Legacy may be discharged, and consequently the interest it self; For, *Qui destruit medium destruit finem*, and this may be before assent of the Executor. 6. Otherwise there would be a perpetuity of Chattels.

2. By this release the Executor had a perfect estate for 3000 years absolutely.

3. The request and acceptance of the release by the Executor amounteth to an agreement,

*The Case of the Chancellour, Masters, and Scholars
of the University of Oxford, 11 Jacobi, fol. 53*

THE Statute of 2. Jacobi, giveth presentments of Churches, which belong to Recusants, convicted to the Chancellour and Scholars of O. and makes grants of such Recusants void: One indicted of recusancy grants a prochein avoidance, & is after convicted, the Church becometh void, the Chancellour, Masters and Scholars, bring a *Quare impedit*, and averre that he remained a Recusant.

1. *Resol.* The grant of the next avoidance betwixt the Indictment and conviction, is void, for the Statute is, that a Recusant convicted shall be disabled, &c. from the time of the Session of the Parliament, so a grant of the next avoidance by an Abbot before surrender, and after the Statute of 31 H. 8. cap. 13. of Monasteries is void; so if an Officer of the King purchase Land, and alien it, and become indebted to the King, this Land is lyable to the debt.

2. Covine shall not be presumed if it be not averred, and if the Jury find that Covine was to one intent, that shall not be taken to another intent, therefore because it is not said, that this grant was by Covine, it shall not be intended.

3. Although the Statute giveth the avoidances to the Chancellour, and Scholars of O. yet they may bring a *Quare Impedit*, in the name of their Corporation, and the misnaming of the Corporation doth not avoid the act when it appeareth what Corporation is intended.

2. It was pleaded that the Statute giveth it to the Chancellour, Master and Scholars, and the Defendant had demurred upon it.

3. This being a private act, it shall be taken as it is pleaded.

4. The

4. The University must shew that the Grantor was Recusant, convicted at the time of the avoidance, but not that he continued so, because it is a Chattrell vested in them, which shall not be devested by his conformity after. Iudgement for the Plaintiffs.

The Bishop of Salisburie's Case, II Iacobi fol. 58.

THE Defendant in a second deliverance, pleads a grant of the Bishop of S. to E. G. and himself of the Office of Surveyorship of his Mannors, with a rent charge of twensy Nobles *per annum*, with confirmation of the Dean and Chapter, and that it is *Antiquum officium*, uled to be granted in such manner to such person and persons, as the Bishop and his predecessors shall please: The Plaintiff pleads the Statute of 1 Eliz. and that the said Office hath not been used to be granted, but for the life of one, whereby the grant is void, *Et hoc paratus est verificare*: It was excepted to the Barre, that the avowant had pleaded that the Bishop and his Predecessors have used to grant the said Office to such person or persons, &c. And the Plaintiff pleads in barre, that it had not been used to be granted, but for one life, and concludeth, *Et hoc paratus est*, &c. where it ought to have been, *quod inquiratur per*, &c. yet it is good, because the avowry is in the disjunctive.

2. It is not averred that the Bishop is dead, and if he be not, the grant is good during his life, it is good, for it appeareth by the words *nuper Episcopum*, that he was dead, or remov'd, exceptions to the avowry, that to say this is an ancient Office is too general, because he made title to the Office it self, but it had been good if he had claimed another thing, by reason of the Office, and the exception holden good: It was objected, that this grant was out of the Statute of

of 1 *Eliz.* because no parcel of the possessions of the Bishoprick, as the Statute speaketh.

2. Such things are restrained by the Statute whereof a rent may be reserved.

3. If it had been an office, parcel of the Bishoprick which the Bishop might exercise, this had been within the Statute, but this is not so.

4. If it be restrained for two lives, then also for one life: But it was resolved, that the said grant for two lives was void against the Successor by the Statute of 1. *Eliz.*

1. *Resolv.* This grant had been good at the Common Law, by confirmation of the Dean and Chapter.

2. The Act of 32 H. 8. cap. 28. inableth the Bishop to make a Lease for 21 years, or three lives, observing the limitations of the Statute, without the Dean and Chapter.

3. The Statute of 1 *Eliz.* restraineth the Bishop to grant any parcel of his possessions, or any thing belonging to his Bishoprick, but for 21 years, or three lives, &c. but against the Bishop himself it is good, and this Office may be said belonging to his Bishoprick, because he had an inheritance in the disposition of it, and the intent of the Statute was to avoid diminutions and dilapidations, therefore a grant of such an ancient Office of service and necessity for one life, as was accustomed, is out of the Statute; but more than that he cannot doe, because it is not of necessity; and the death of one of them in the life of the Bishop is not to the purpose; for the grant was void against the Successor, and it shall not be made good by accident after.

4. Such a grant for one life, without confirmation of the Dean and Chapter is void, because it is out of the Statute of 1. *Eliz.* and resolved also, that although

though the Bishoprick be new, yet a grant of a new
 Office, with a reasonable fee (of which the
 Court shall judge) bindeth the successor.

Nota. Where there was a clause in 1 *Eliz.* that Bi-
 shops may grant to the Queen, &c. 1 *Jacobi* by Par-
 liament restraineth them, and after Judgement was
 given for the Plaintiffs,

*Whistlers Case, 10 Jacobi, fol. 62. Upon a special
 verdict.*

Before the Statute of *Prærogativa Regis, cap. 15.* by
 the grant of the King of a Mannor, all appendants
 without naming them) passe, and the Statute ex-
 presseth Knights Fees, Advowsons, and Indowments,
 and all other appendants now passe without naming
 them, and so do Advowsons passe in case of restitu-
 tion, for the Statute speaketh of Grants, and in Grants
 so, without expresse mention by the words *Adeo
 me & integre*, &c. See other good matter there,
 touching this Subject.

*The Church-Wardens Case of St. Saviours in South-
 wark fol. 66.*

Queen Elizabeth leased the rectory to the Church-
 Wardens of St. S. for 21 years, and after leased
 it in for 50 years, in consideration of the payment
 of 20 pound, and surrender of the Letters Patents
 of the Church-Wardens, *Modo habentes, & ad pro-
 prios possidentes*, & the special Verdict found, that they
 paid the 20 l. and that they delivered the Charter in
 Court to be cancell'd, and that they paid the Fees,
 and that no Vicar was made, yet the grant is good;
 for it appears that the intent was not to make a sur-
 render in deed, because he saith, *Modo possidentes*, but

a surrender in Law by acceptance of the second Letters Patents, and although a Corporation cannot make a surrender in deed, yet they may make a surrender in Law.

2. Although an action surrender is requisite, they have done all which belongs to them, by delivery of the Charter and payment of the fees, and the Cancelling belongs to the Court.

3. Although it was recited that 20 *l.* was paid, yet it needs not to be found, for it is but in the personality, and is affirmed by the King to be paid, and is also executed: See *Barwick's Case*, 5 Report. 93.

The Case of the Marshalsea, 10 Jacobi. fol. 68. In false imprisonment.

AN action upon the Case, upon an *assumpsit* brought in the *Marshalsea*, whereas no party was for the Kings House, the Plaintiff recovered, the Defendants arrested the Plaintiff by a Precept, in the nature of a *Capias ad satisfaciendum*, and the bringing false Imprisonment, and judgement given against the Defendants.

1. Resolved, the Steward and Marshal at the Common Law hath two authorities: One general, as Vicegerents of the Chief Justice, in his absence, with the Verge; Another, as Judges of the *Marshalsea*. This last was limited to Debt and Covenant, when both are of the House, and to trespass, *Vi & armis* where one is, but not if it concern Land, and because they have the general authority at will, and the other for life, they draw many cases to the *Marshalsea*, which ought to be in other Courts: Their Jurisdiction by *Fleta. Lib. 2. cap. 2. Infra metas hospitii contriventur* & *Leucas in thronis*. And the Statute of 13 R. 2. c. 3 limits the 12 miles to be accounted about the King's Tonnell.

1. The reasons wherefore this special authority was given them, were,

1. Because the Sute there, is by Bill, by reason of their Privilege, which cannot be elsewhere.

2. In respect of the necessity of attendance of the Kings Servants.

3. If Strangers shall be suffered to sue there, one Corman would sue another Corman there, *in aula Regia*, which were undecent, but the general authority granted by the Act of 18 E. 1. c. 5. which ordaineth, that the Chancellour and Justices of the King should follow him, therefore in *Præsentia Majoris* etc. &c. and about 4 E. 3. the Court of K. Bench became Resident.

3. The Statute of *Articuli super Chartas*, is as much an explanation of the great Charter, and the Charter of the Forrest, & not introductory of a new Law, and the third Chapter of that Act explains, the Indiction of the Marshalsea, as before, and if he hold otherwise a prohibition lyeth, and the party shall have an action upon the Case as a consequent upon the Statute.

4. That part of the Statute which giveth them Indiction in trespass, shall be intended trespass, *Hi* *Arms*.

5. This Action lyeth against the Defendants, because the Court had not Jurisdiction, and so have not it by command of the Judge, otherwise if the Court had Jurisdiction, but proceedeth *Inverso ordine*, erroneously, as if a *Capias* be awarded against an Earl, &c. one who is indicted before Justices of Peace, cannot approve. 1. Because he cannot give a Coroner. 2. Because it is out of their Commission, if a Court Leet be holden at another day than it ought to be, the proceeding is, *Coram non Iudice*, otherwise it is of a Court Barou, 6 R. 2. Action upon

upon the Statute, *Plac. ultimo*, in the point, that judgement in the Marthalsea, when none of the parties is of the K. house, may be avoided by plea without any Writ of Error, which proveth that it is void.

Leonard Loveis Case, 11 Jacobi. fol. 78. In Ejectione firme, for 8 acres, &c.

L. L. seised of diverse Mannors in soccage and in Chivalry. In Capite, maketh a feoffement to diverse viles, in an Indenture precedent, whereby he limits to himself for life, without Impeachment of waste, and to the use of his Lessees and devisees, the remainder to his second Son in tayl, &c. the reversion to himself with power of revocation, after he purchaseth 8 acres in soccage, and revoketh, as to certain Mannors holden in soccage, and deviseth them and the 8 acres to his eldest sonne, and the heirs Males of his body for 505 years, provided that if he alien otherwise than for years determinable, upon the deaths of three persons, or lesse number, rendering the old rent, or die without issue Male, then to his second son in tayl, with proviso to make Leases, according to 32 H. 8. only L. L. dyeth, the Eldest sonne enters into the 8 acres, and dyeth, leaving one Daughter, who married R. D. who enters into the 8 acres, &c. second sonne dyeth, having L. L. who enters upon R. D. and leaveth to the Plaintiff, who enters, upon whom the Defendant enters, and ejecteth, &c. and if the entry of L. L. the Lessor was congeable or not, was the Question, and it was judged that his entry was not lawfull, and judgement was given against the Plaintiff, in this Case diverse points resolved, some at the Common Law, and some upon 32 and 34 H. 8. of Wills,

1. **Resolv.** if a man seised of three Acres of equal value, one holden in *Capite*, and giveth that and one of the other to his younger Son in tail, he cannot devise any part of the third Acre, because he had executed his power, and if he purchase other Land in fee, he can devise but two parts of that, by reason of his reversion in *Capite*, expectant upon the estate tail.

Object. That the K. was once satisfied of the wardship by the Statute, in respect of the Acre holden, the reversion thereupon shall not hinder the devise of Land purchased after.

The Statute doth not regard this seck reversion, but inheritances of annual value. **Resp.** To the effect, that this reversion shall hinder the devise, by the words of the Statute, for he had a reversion of the lands holden; but although the Statute saith, that he may alien two parts, by act executed or will, if he give to one of the three uses by act executed, he may lose the reversion, for the Statute is to be intended of an entire alienation, and where the Statute speaks in reversion or remainder, it is to be intended, that the Devisor be seised of such a remainder which draws wardship.

To the second it was answered, that things which by their nature are seck, are out of the Statute, but things which of their nature are of annual value, but are not of value in respect of some Lease or term, *Abq, abliquo inde reddendo*, and therefore seck reversions are devisable by the said statutes; but if they be not, yet they shall not hinder the devises of Lands: To make one able to devise by those statutes, the time of Having, Holding, and disposing must concur, and therefore if a grant to the second son here, had been in fee, although with power of revocation, the devise had been good, because he

had no Lands *In capite*, at the time of the devise, if the Father conveyeth his Land to the use of his younger Son, the eldest being within age, after the death of his father, he shall be in ward, although nothing descend; A true Child, and not in reputation is within the Statute, and if the Son purchase land *Bona fide*, of his father, this is out of the statute, because it is not for his advancement; If Tenant in socage devise, and after purchase Land in Chivalry, the devise is void for a third part, but if Tenant in Chivalry and socage devise all, and after aliens the Land holden, this is good. To make division, that the King shall have a third part holden, the Lands shall be taken according to their value at the time of the death of the Devisor. The time of provision that a third part must descend, needs not concur with the time of alienation, but it is sufficient that he had it at the time of his death. The estate to any of the three purposes, sought to continue to the time of death, and the Tenure must till after death, to make it within the Statute, and the estate also of Land holden, ought to continue after death, therefore if Tenant in tail, in *Capite* devise socage Land, and die without issue, this is good, so privity must continue after death, therefore if he who made the conveyance be attainted, this is out of the Statute: The uses to the second Son are in contingency, and not executed by 27 H. 8. by the power to make Leases, and devise reserved to the feoffor, and therefore the feoffor is in the feoffor in the mean time, so that having disposed of it, and being seised of it, he cannot devise the Land purchased after.

It was Objected, that the Statute saith, lawfull executed in his life, but here no use was to be executed in the second Son untill after his death.

It was answered, that after his death the use

were driven out of the feoffment, and so are as it were executed in his life.

It was holden by the Chief Justice, that the remainder to the second Son is contingent, in regard to alienation is found to be made by the Eldest, and there had been, then it would be repugnant, that after alienation the Land should remain to the second Son; and so *Quacunq, via data*, the remainder as the Case is) cannot vest in him, but this point was resolved by the Conrt. 2. The revocation is good, although the Indenture preceded the feoffment, and that the uses are in contingency, and that the Revocation is but in part, and the Chief Justice held, that the eldest Son had but a term determinable, and the second an estate Tail, but in this, the Kings Bench and Common pleas differ in Opinion, and that if Lands be devised to one and the Heirs of his body for 500 years, the Executors shall have it, and not the heir; and the devisee may alien it, for it cannot be entailed, and so in *Peacocks Case*, 28 *El. in quo Regis*, was it resolved.

Doctor Leyfields Case, 8 *Jac. fol. 88. in Trespass.*

IN Trespass for Corn taken at O. C. the Defendant pleads *Q. Eliz.* granted the Rectory of O. C. to C. P. without shewing the Letters Patents, who demised to G. P. for 8 years, if the said C. P. should long live, and that he, as Servant of C. P. took the Corn, and avers the life of C. the Plaintiff demurreth, because the plea amounteth to the general issue, and it was adjudged in the K. Bench that the Bar was insufficient, because the Defendant shewed not the Letters Patents, and error was brought in the Exchequer Chamber, because the plea amounts to the general issue, because the De-

Defendant gave no colour, wherein judgement ought not to be given against the Defendant, but only to answer over.

2. Because he is not bound to shew the Letters Patents.

It was answered, that colour shall not be given, for colour shall not be given where the plea goeth to the bar of the right, for it would be in vain to give colour of right, and to bar him if he had right, as if a collateral warranty, fine, Statute be pleaded, or if he claims by a writ, otherwise where he pleads a descent, for this doth not bar the right, but the possession; he who claims by sale in a Market overt, shall not give colour if he pleads generally, but if he pleads that I. S. was possessed, as of his own goods, and sold them as in a Market overt, or waived them, there he shall give colour, because he confesseth no interest in the Plaintiff.

2. If the Defendant claims by the Plaintiff, he shall not give colour.

3. If the plea be to the Writ, or action of the writ, no colour shall be given.

Colour shall not be given in case of Tithes, for whomsoever the Lands belong, the Tithes belong to the Parson.

4. Colour ought to be a doubt to the Laygent.

5. It must have continuance.

6. It must be such a colour that if it be effectual, it maintain the Action.

7. It ought to be given by the first conveyance.

8. Resolved, Lessee for years or Lessee for life, he K. must shew the Letters Patents, for he who is privy in estate or interest, or who justifieth in the name of a party or privy, although he claim but part, shall shew the first deed, and the reason that deed shewed to the Court, is, that the Judges and Jury

ry (that which respectively to them belongs) shall judge of the sufficiency thereof, therefore a deed shall not be suffered to be given in evidence, by witnesses, or Copy, except it be burned, or some such inconvenience, but a Copy of a Record is good evidence; If a Release be made to Tenant for life, this inureth to the Reversioner, yet he cannot plead it without shewing, *a Fortiori*, here because the Lessee may contract with the Lessor, to suffer him to have the deed to shew; but strangers who claim not the thing granted, nor interest out of it, need not to shew the Deed, otherwise if he claims the thing granted, or interest out of it; *Ergo*, the second grantee of a rent charge must shew the first grant, but he who claims as Gardian, or merely by the Law, without privity or power of providing the deed need not to shew it: But Tenant by the courtesie must shew it, because the deed was in his power living the Wife, otherwise of Tenant by statute, &c.

3. The not shewing of the deed is matter of substance, therefore judgement shall be given against the Plaintiff in the writ of Error, although it was not shewed as cause of Demurrer. And judgement was affirmed.

Nota, when a plea amounts to a general issue, if the Plaintiff demur specially, upon 27 *Elix.* and the Defendant joyn, judgement shall be given for the Plaintiff.

Edward Seymors Case, 10 Jacobi, fol. 95.

THE Lord *cheyny* Tenant in tail, the remainder in tail to I. C. the reversion to the Lord C. bargains and sells, and levies a fine to the bargainee, with warranty to him and his Heirs, the bargainee infeoffeth the Lord S. who escoffeth E. S. I. C

dies, having issue T. the Lord C. dieth without issue, *Edward*, Lord S. leaseth to the Plaintiff, the Defendant by the command of T. ejected him; and judgement was given for the Defendant, and affirmed in Error.

1. Resolved, the Barganee had an estate descensible, during the whole life of the Bargainor (whereof his wife shall have power) and also the reversion in fee expectant upon the remainder in tail.

2. The Fine after bargain and sale, is no discontinuance of the remainder, for this operates upon the Estate passed by bargain and sale, and corroborateth that, and maketh it determinable only upon the death of the Bargainor without issue, otherwise if the fine had preceded the bargain and sale.

3. It was objected, that the Feoffment of the barganee displaceth the Remainder, so that the warranty which descends upon him barreth him; but Resolved, that the warranty doth not bind him.

1. Because it was annexed to an estate determinable by the death of Tenant in tail, without issue, and to the Reversion in Fee, granted by the bargain and sale, and fine, and not to the Remainder in tail, and the Confee by his own Act cannot make it to extend any further; therefore the estate tail being determined, the warranty ceaseth.

2. A Warranty barreth not an estate, which is not displaced at the time of the warranty annexed, as if the Father maketh a Feoffment of Land (out of which his Son hath a Rent) with warranty, this binds not the Son as to the Rent.

3. The feoffment was lawfull, because he had fee, therefore he cannot make discontinuance.

4. A Warranty cannot enlarge an estate, the Remainder in tail to I. C. was not discontinued, for the Feoffor was not then seised by force of the tail.

5. A collateral warranty may be given in evidence, if it be not pleaded, for although it giveth not a right, yet it barreth anothers right, and the rather in an *Ejectione firme*, and other personal actions, because in them it cannot be pleaded by way of bar.

Note, there are some Titles to which a warranty extendeth not, as in case of Mortgage, Mortmaine, consent to a Ravishor, for in these cases no Action lyeth, in which Voucher or Rebutter, can be, neither shall a descent take away an entry.

Bewfages Case, 10 Jac. Common Pleas, fol. 99.

THe Sheriff upon a *Fieri facias* executed did take an Obligation of the Defendant to pay the money in Court, at the return of the writ, and this was adjudged good, notwithstanding the Statute of 23. H. 6. Before this Statute the Sheriff could not let any person to bail which was taken, *Ad responden.* as may appear, *Fitz. Na. br. 25. a & b.* and in 34. E. 1. in Debt by *Dawson* Sheriff of B. against *Burnam* upon an Obligation, the Defendant pleaded the Statute 23. H. 6. and shewed, that one K. recovered Debt and damages against him, and pursued one Writ of *Fieri facias* against him, directed to the Sheriff of B. and that he made the Obligation to the Plaintiff for the Execution, and that the Obligation was void by the Statute, whereupon the Plaintiff demurred, and it was resolved.

First, that the Obligation was not within the Statute, because that the Statute extended only to such Obligations which any who is in their ward did make unto him.

Secondly, that the same Obligation was not void at the Common Law, whereupon the Plaintiff had judgement, and another judgment, 18 El. Inter *Burwey*

☞ Kett, upon an Obligation, taken by the Sheriff, *Pro solutione pecunie debite domine regine*, upon ex-
tent out of the Exchequer.

Now it is said in the latter clause of the act, that if any of the Sheriffs or other Officers or Ministers a-
foresaid, take any Obligation in other form, by co-
lour of their offices, that it should be void, &c. There
are two manner of forms, (*Viz.*) *Forma verbalis* &
forma legalis, for *Verbalis* stands upon the Letters &
Syllables of the Act, *Forma legalis*, is *Forma essenti-*
alis, and stands upon the substance of the thing to be
done, and upon the sence of the Statute, *Quia notitia*
ramorum hujus Statuti, non in sermonum solius sed in ra-
tionis radice posita est, and according to this distincti-
on this branch of this Statute is to be expounded,
and therfore in 37 H. 6. 1. If the Sheriff take a single
obligation of one in his ward that wasailable, this
was void, for this Obligation wants essential form,
prescribed by the Statute; for the condition pre-
scribes the fault, which is part of the substance. And
there Moyle said, that if the Sheriff let one to Bail
or Mainprise, that is excepted in the statute, and not
mainpernable, and take a simple obligation, that the
same is void, *Quod alii Justiciarii concesserunt*, for by
the exception it appeareth, that it was not the inten-
tion of the Statute, that such should be let to bail, and
therefore the obligation is taken in another sence
than the Statute intends. And it seemeth to me, that
as well in the same case of 37 H. 6. as in the princi-
pal Case of Dive and Manningham, plow. 67. the Ob-
ligation which had the condition to save the Sheriff
harmless (when the Sheriff against the Law, pur-
teth one to bail who is notailable) is against the
Law, and void by the Common Law. And with this
accordeth *william wishams Case*, 15 Eliz. Dier 224.
and in 7 E. 4. One was in custody of the Sheriff

by

force of a *Capias*, upon an indictment of the Trespass, and the party maketh the Obligation to another, by the direction of the Sheriff, upon this condition, as the statute prescribes for the suerty of the Sheriff, &c. and there it is holden that the obligation is void, because the statute prescribes, that the obligation shall be made to the Sheriff, and that is a part of the essential form; and so if the Sheriff adds to the condition, that he shall be kept harmless against the King and the Plaintiff, &c. This is void, so if a Gaoler or a Sheriff take an Obligation of the person, with condition to be true Prisoner, or to pay for his meat and drink. So if the Sheriff adds any thing to the matter prescribed by the statute, as to pay such a sum of money for a Horse, &c. This condition maketh all the Obligation void, for it is taken in another form (touching the substance of the matter) than is prescribed in the statute, but *Pasch. 27 Eliz.* in the Kings Bench, in an Action of Debt brought by Sir *William Dury*, late Sheriff of *Suffolk*, upon an Obligation of 20 l. against A. it appeared that the Defendant was solely bound in the same, and with condition, that one *Moore*, whom the Sheriff had arrested upon a *Latitat*, should appear in person at the day contained in the Writ, the Defendant pleaded the statute 23 H. 6. and that the Obligation was made in other form than is mentioned in the statute, whereupon the Plaintiff demurred in Law, and it was objected that there were 3 variances from the statute. *Viz.* one in the Obligation, and two in the Condition. First, in the Obligation, for that there was but one surety, and the statute prescribes reasonable surety of sufficient persons in the Plural number, having sufficient within the said the County, &c. in which case there ought to be two sureties at the least, and the Plural number cannot

cannot be satisfied with the Singular number, and so contrary to the word of the Statute. And so was the Opinion of *Mountague* Chief Justice of the Common-Place in the Case of *Dive* and *Manningham*.

Also, in the condition that the Prisoner should appear in person, where the words of the Statute are, that he should appear (generally) without these words (in person.)

2. that he should appear at the day, &c. *Ad respondendum*, where these words *Ad respondendum* are more then the Statute prescribes, and therefore the Objection is voyd, &c. but it was resolved by Sir *Christopher Wray*, Sir *Thomas Gaudy*, and all the Court, that the Obligation was not voyd, by the said Act.

For to the first; The words reasonable surety of sufficient persons are added for the surety of the Sheriff, and therefore if he will but take one surety, be it at his peril, for he shall be amerced if the Defendants appear not; and therefore the Statute doth not make void the Obligation in this Case, for the same Branch that requires form, requires also that the Obligation shall be made to the Sheriff himself, by the name of his Office, and that the Prisoners should appear, in which clause no mention is made of the sureties, so as the intent of the Act was, that in so much as it was at the peril of the Sheriff to leave to his discretion, to take one or more for his indemnity, and although the sureties have not sufficient within the same County as the Statute mentioneth, yet the Obligation is good: For these words of the Act, (as to this point) are more for counsel or direction of the Sheriff, then for precept or constraint to him, and that for the safety of the Sheriff, for if the Defendant cannot find two sufficient persons, having sufficient within the same County, the Sheriff

Sheriff is not bound to let him to Baile, and this resolution agreeth with the ancient rule, *Quilibet potest renuntiare juri per se introducto*. And as concerning the second Additions to the condition of the said Obligation, more than is in the Statute.

It was resolved, that true it is there is a Verball difference of the form prescribed by the Statute, but not in the substance and effect, for he that is so taken to Baile, ought to appear in person, for so much is implied in the words of the Act, (shall appear) and by the common Law, every Tenant or Defendant ought to appear in proper person; and with this accordeth *Fitz. Na. br. 25.* and he that ought to appear, ought to appear *Ad respondend, & parum differt quæ re concordant, & est ipsorum legislatorum tantum viva vox rebus & non verbis legem imponere, vide 21 Eliz. 364.* where the Condition was in the conjunctive (appear and answer) and yet the Obligation good, 27 *Eliz.* in *Darby & Hethcot*, if a Gaoler or Sheriff, for ease or enlargement of any Prisoner, take promise to save him harmless, that although the Statute speaketh only of Obligations with condition, yet it is an equal mischief. And *Wray* Chief Justice said, that the Statute should serve for small or nothing, if the premises should not be taken to be within the Statute, and the latter clause is generall, *Viz.* If the Sheriff take any Obligation in the other form, that it shall be void, and within the equity of these words, (any Obligation) an Assumpsit is comprehended, for the ancient Verses are

*Verba ligant homines, taurorum cornua boves,
Cornu bos capitur, voce ligatur homo.*

Quando verba Statuti sunt specialia, ratio autem generalis,

lis, generaliter Statutum est intelligendum: It was said that the *Assumpst* did not bind the Prisoner at the common Law, because the consideration was against the Law; vide *Dyer* 19 *Elix.* *Oneleyes Case.*

Alfridus Denbawds Case, 10 Jacobi, fol. 102. In Error.

ONE Jury only appeared at the Assizes to try an Issue in Trespass, a *Tales de circumstantibus* is awarded at the Prayer of the Plaintiff; the Title of which, was, *Nomina decem Talium*, and verdict and judgement was given against the Defendant, who brings Error.

It was Objected, 1. That the judgement was erroneous, for the Title being *Nomina 10 Talium*, the Sheriff cannot return 11.

2. Because the statute speaketh with these persons that were before inpannelled, which cannot be satisfied, where one only appeareth, as the statute of *Westm.* 2. c. 11. is not satisfied with one Auditor, so of the statute of *Merton* c. 3. of Redisseisin: It was resolved, that the *tales* was well awarded, for the statute shall be taken beneficially in favour of speedy Trials, and the Title is the misprision of the Sheriff, which shall be amended.

The time of granting the *Tales* is when so many of the Jurors make default, that the inquest cannot be taken; if two of the principal pannell appear, and at the Prayer of the Plaintiff twelve *de Circumstant.* are returned, and then the two Principals are withdrawn, now the Trial shall be all by the 12 *de circumstant.* but the Dord *Dyer* made a quare of that, if one of the Jurors dye before the Verdict be given, a *Tales* shall be granted, he who is meerly a Defendant cannot pray a *Tales* untill default be made by the

the Plaintiff, the number ought to be under the number in the principal pannel, except in an appeal, because there the Defendant may challenge peremptorily: the number shall be diminished in every new Tales, and they ought to be of the same quality with the former, as if the principal pannel were *Per medietatem lingue*, so shall the Tales be: Justices of Assize shall not award a Tales, *de circumstantiis* in an assize, for the statute of 35 H. 8. c. 6. speaketh where the Trial is *Habeas corpora, distringas*, or *Nisi prius*, for an Assize cannot be taken by *Nisi prius* but must be taken in the proper County; and after, by advice of all the Iustices of the Common place, and Barons of the Exchequer, the judgement was affirmed.

*Humphrey Lofields Case, 10 Jac. fol. 105.
In debt upon Bond.*

D. Leased for a year to H. L. and if the parties shall please to renew the term at the end of that year, that he shall have for three years, tending 40 *l. per annum*, H. L. bindeth himself to perform Covenants, and faileth of payment of 20 *l.* at Christmas Quarter, D. bringeth debt: It was resolved for the Plaintiff. It was objected against the action.

1. That the reservation was upon a contingency, if the term shall revive.

2. Because the reservation is *durante termino praedicto*, *Viz.* the last Term.

3. the reservation shall be taken strictly, because the words of the Lessor.

But it was resolved, that the reservation extendeth to the first year, for the proper place of a reservation is after the limitation of the estate; as if a Lease

Lease be made with divers remainders over, reserving Rent, this goeth to all; and although the second Term be in contingency, yet the first is certain, and *Termino prædicto* signifieth both the terms, for it is *Nomen collectivum*, and the reservation shall be taken reasonably, according to the intent of the parties. Tenant in tail of an Acre in Borough Engleth, and of another by the Common Law, by an Oxe, dieth, having issue two Sons, the service shall not be increased: And increase is only between very Lord, and very Tenant, for there may be increaser, but not where there is a reservation; or if the Seigniorie be by Deed, and services are reserved within time of memory, for he shall have no more than himself reserved: In the Case at Bar in respect the Obligation was forfeited, the Court moved the Plaintiff to take his arrearages, costs, and damages, with which he was contented, and so no judgment was given.

Arthur Legats Case, in subversion of pestilent Patents of theevish Concealors, 10 Jac. fol. 109 in Communi Banco.

THE King *ex certa scientia, &c.* grants fifteen Acres as concealed, which were parcel of a Mannor of the profits, whereof the King was answered: Nothing passeth.

1. *Resolv.* If the King were answered of the old Rent of the Mannor, and the Fermors, &c. suffer one to intrude in part, this is not concealed. 2. The grant is void, for *que quidem, &c.* is the suggestion of the party.

3. This is a clause of restraint, and nothing passeth which is not concealed.

3. The King did not intend to diminish his Reve-

nuc

ue, which will be if the grant be good.

4. The clause, *que quidem*, hath a double conjunctive, *concelata & detenta*, and Land cannot be detained from the King.

3. *Ex mera motu &c.* aideth it not.

4. If the Officers of the King may by matter of Record, have notice of putting the Land in charge in Court of Record, and do it not, yet this is not concealed, and if the clause *que quidem* be added for more certainty, the grant shall not be vitious by it, if it be false; as if a Mannor be granted, *quod quidem*, was in the tenure of I. S. where it was not, this is good: If one substract, or rake the Kings Rents, this is not concealed, for the King may charge him as Baily, and the Law will make a privity: See the Statute of 4 H. 4. cap. 4. called in the *Rolle Brangyjn* in English, *White Crow*. And it was said that Perpetuities, Monopolies, and Patents of concealment, were born under one unfortunate constellation, for as soon as they came in question, judgement was ever given against them, and none ever for them, and they have all two inseperable qualities (*Viz.*) to be troublesome and fruitless.

Robert Pilford's Case, 10 Jacobi, fo. 119.

THE Plaintiff in trespass, counts to damages of 40 l. and at the *Nisi prius*, the Jury assessed for damages 49 l. and 20 s. costs, at the day in *banke* he released 9 l. parcel of the damages, and had judgement of 40 and 10 l. for costs *de incremento*, the defendant brings error, because the damage, and costs surmount the sum in the Court; but judgement was affirmed; for in reall actions before the Statute of *Glocester*, 6 E. 1. cap. 1. no damages were recoverable, but in personal actions and mixt they were,

were, and by that Statute a man shall have costs in all cases where he recovers damages *Viz.* before, or by the same Statute; therefore it after this damages are given where they were not at the Common Law, costs shall not be recovered, as in a *Quare impedit*, but if a Statute after this give double or treble damages, where damages and costs were by the Common Law; there the Plaintiff shall recover the damages increased, and costs also; but in waste against Tenant for life, costs shall not be recovered, for although this Statute was at the same Parliament, yet it was an Act of Creation, and therefore no costs: And true it is, that damages include costs, in a general sense, but in the count it is taken for damages, before the Action brought in a relative signification; therefore *expense litis* may be added to it, although he count not of them, as a man shall do in real actions without counting of them, because he shall recover them pending the writ, *In entrie sur disseisin*, the Plaintiff shall recover damages from the disseisin to the Writ of inquiry, &c. and if the issue be tryable by verdict, &c. to the verdict, but in a *Præcipe* of Rent of his own possession he shall recover all arrears to the judgement: judgement affirmed by all.

Cheyneyes Case, 10 Jac. fol. 118.

IN a *Valore Maritagii*, issue is joined upon the tenure, and found for the Plaintiff, but the Jury did not inquire of the value: Adjudged the verdict is sufficient and shall not be supplied by a Writ of inquiry.

1. In this Writ three things are to be recovered, the value, damages, and costs, and although the issue be joined upon the tenure, yet as a consequen
upon

on the issue, and their charge they ought to inquire the value, if they find for the Plaintiff; as in an assize, if issue be joyned upon a release, and found for the Plaintiff, yet the recognitors must inquire of the seisin and disseisin, and this defect shall not be supplied with a Writ of inquiry, because then the Defendant would be prevented of his Writ of *Quare*; But if the Court ought to inquire of things whereof no attainr lyeth, this being but of Office, may be supplied by a writ of inquiry, as the four points in a *Quare impedit* (*Viz.*) *De plenitudine, ex curren-
tibus, et de presentatione, si tempus semestre transierit*, and the value of the Church *per annum*; and in the Case at bar by the rule of the Court, a new *Venire facias* is awarded.

The Case of the Maior and Burgeses of Lynn Regis, touching misnaming of Corporations, 11. Jacobi, fol. 122. Communi Banco.

¶ 8. in the 29. year of his Reign, did incorporate that town by the name of *Maioris & Burgesium burgi domini Regis de Lynn Regis*, and one made an Obligation to them by the name of Maior and Burgeses of *Lynn Regis*, omitting these words, *Burgi Regis*; this is good, because it is the same name in substance, and doth not vary in materiall words, and though it be not *Idem nomen syllabis*, yet it is *Re & sensu*, for Burgeses that implyes it is a Burrough; for Burroughs and Burgeses are *conjugata*, and by *Lynn Regis*, it appears that it is *Burgus suus* (i) *Regis*, *fortiori*, because there is no other Corporation of the same name. *Apices juris, non sunt iura*, there may be a difference between ancient Corporations, and new; for ancient Corporations may by usage have several names; and the Maior and Burgeses (not-

D d

withstanding

withstanding *Non est factum*, pleaded) had judgment to recover.

William Cluns Case, 11. Jacobi, fol. 127. Banco Regis

A Lease for years, if the Lessor should so long live, rendring Rent at the four Feasts, or within thirteen weeks after, after one of the Feasts the Lessor dyeth, and before the thirteen weeks be past, the Executor brings debt against the Lessee, and the Defendant demurreth upon the Count, and it was adjudged a good demurrer, and that the action did not lye.

1. Because the disjunctive is added for the benefit of the Lessee; and the first day was but for voluntary payment, but the legall time of payment was the end of the thirteen weeks, before which when the Lessor dyeth, the Lessee is discharged by act of God for that Quarter; if Lessee before the day, pay the Rent, this is voluntary and not satisfactory, but it is good to give seisin; if payment be in the morning, and the Lessor dyeth at noon, this is voluntary and satisfactory against the heir, but not against the King: Payment the last instant of the day is satisfactory, and after the day it is coercive and satisfactory.

2. When the first day is past, it is as if the Rent had been only reserved the second day. for the election is good.

3. The rent is to be paid out of the profits of the Land; *Ergo*, in regard of time it shall not be apportioned; and if the Lessor dye betwixt the first day and the last day, his heir, and not the executor shall have the rent, because it was not then due if a man lease for years, rendring Rent at M. or within a month after, with a Condition of re-entry

and the Lessee renders it at the last instant of M. the Lessor shall not re-enter upon demand the last day of the moneth, because the Lessee had liberty to pay it then; and the difference was taken betwixt the said disjunctive Reservation, and when the reservation is at a certain Feast; and a condition is added, that if it be arrear by the space of a month after the Feast, that then the Lessor, &c. there the Lessee for salvation of his Lease, cannot render it at the last instant of the Feast, because he had no such liberty, as in the other Case: A Lease for years rendering Rent at M. or within twelve days after, upon condition to re-enter if it be arrear by the space of twelve dayes after any of the said Feasts, or dayes, the Lessee shall have twenty four days in safe-guard of his Lease: after the Feast o^r M. and in the Case at Barr judgement given, *Quod querens nil cap. per nullam.*

James Osburnes Case, II Iacobi, fol. 130.

Banco Regis.

IN an action upon the case, for the Plaintiff had bought of the Defendant diverse goods which he refused to deliver, whereof one was *unum fulcrum suffi, Anglice*, A Feild Beadstead with a Testerne, and Curtains of Saye, the Plaintiff recovers, and damages assessed intirely, where none ought to be given for the Testern, &c. for *Fulcrum* signifieth a Bedstead only. upon error brought therefore, judgement was affirmed, for one thing only is here put in issue, for the other things are not alleged *Positive* and *expositive*, and are nagation, but when two things are put in issue, or *Oblique*, inquired of by the Jury, there it is not good; and it shall not be intended that damages were given for that only for which the

action was brought, but in an action upon the Case for words spoken at one time, whereof some are actionable, and some not, there damages may be assessed intirely, and shall be intended to be given for the words actionable only.

1. Because the Plaintiff must declare as the words were.

2. Because the words not actionable aggravate the damages, orherwise if spoken at several times; but here damages shall be intended to be for that which is actionable only, and the rest, as if never alleged: and in Writs or Pleas English words are not admitted by 36 E. 3. cap. 15. except they be parcell of a name, as 10. in the Hall. 2. words which passe under the name of Latine, are.

1. Good Grammaticall Latine.

2. Words significant in Law, and not in Grammar.

3. Incongruous Latine, which doth not vitiate a Plea, or Grant, nor Judiciall Writ.

4. Words insensible, having no countenance of Latine, and are rejected; but feigned words as *Kelnetum*, *Stapedia*, &c. are good.

Read, and Redmans Case, 10. Jacobi, fol. 134.

THe Defendant in Debt brought by two Executors pleads the death of him who was summoned and severed.

Resolved. The Writ shall not abate; if two purchase an originall reall action, and one dieth pending the Writ, this shall abate in all, as in case of joyntenants, or parceners, where one dieth having issue, or no issue, because that she may have a Writ for the whole, and shall not recover a moyety, and one shall not recover upon a false reall Writ, or unapt for his Case, in respect he may have an apt Writ, although

though it happen after by act of God; but if two purchase a judicial Writ, and one is summoned & severed, and dies without issue, the Writ shall not abate; the same law where jointenants, but if the Coparcener had issue, then it shall abate: If one of the Plaintiffs after summons and severance marryeth, this shall not abate the Writ. In personal and mixt actions, although an intire Chattel be demanded, the death of one after summons and severance doth not abate the Writ; as in a Writ of ward of the body: In a *Quare impedit* without severance, &c. If one die the Writ shall not abate, because thereby the other should be dis-inherited, as upon penatice and six moneths passed; but without question if one of the Plaintiffs in a *Quare impedit* be severed and die, the Writ shall not abate; where the Plaintiffs are only to discharge themselves, the Writ shall not abate by the death of one of the Plaintiffs or Defendants, and therefore there the Non-sute of one, is not the Non-sute of the other, but otherwise it is in a Writ of Error: Note, summons and severance is before apparance, and Non-sute after apparance, where the severance is without Process.

Richard Smiths Case, 10. Jacobi. fol. 135.

R. S. bring a *Quare impedit presentare ad medieta-tem Ecclesie*, and adjudged the Writ was good. None shall have such a *Quare impedit*, but when there are two several Patrons: And 2 Incumbents of the Church; therefore if two present by turn, the *Quare impedit* must be *presentare ad Ecclesiam*: when the Register giveth a Writ for the whole, this is a good warrant to bring it of any part, if the case will warrant it; but it seemed to the Chief Justice, that in the Case at Bar, the Writ might have been

Dd 3

good,

good presentare ad Ecclesiam, for as to him it is one Church.

Cases upon the Commissions of Sewers, 7 Jacobi.

The Case of Chester Mill upon the River of Dec.
fol. 137.

ADjudged that the Statute of *Magna Charta omnes fidelis deponantur*, extends only to open Weares for taking of Fish; and that Commissioners of Sewer cannot subvert a Causey, &c. erected before the time of E. 1. but by the Statutes of 25 E. 3. cap. 4. and 1 H. 4. cap. 12. if they be inhaunced, they ought to be amended by abatement of the inhauncement, and the Causey in question was erected before the time of E. 1. and never since inhaunced, and therefore out of all the said Statutes.

Keighleys Case, 7 Jacobi, Communi Banco, fol. 139.

IT was resolved, that if one be bound by prescription to keep a Wall *contra fluxum maris*, and the wall is subverted by a sudden inundation of waters, salt or sweet, by the Statute of 23 H. 8. cap. 5. the Commissioners have power to tax all equally who have damage by such surrounding, for no default was in the party; so if the wall be in inevitable danger, but if it be through his neglect, each one may have his action upon the case against him, and if the danger be not inevitable, he only shall be charged.

2. *Resolv.* By the said Statute, the Commissioners are not bound to observe the customs of Romney Marsh,

marsh, but where such customes are in any places within their Commission.

3. According to your wisdoms and discretions in the said Act are to be interpreted according to Law and Justice, for every Judge or Commissioner ought to have *dum sales, salem sapientia ne sit insipidus, & salem conscientie ne sit Diabolus*; and discretion is *scire per legem quid sit iustum*: and every of their Ordinances ought to consist upon four cause,

1. The material cause, and that is the substance.
2. The formal cause, and that is the manner.
3. The efficient cause, that is their authority.
4. The final cause and that is for the publique good.

The Case of the Isle of Elye, 7 Iacobi. fol. 141.

The Commissioners of Sewers decreed that a new River shall be cut out of Owse, seven miles within the main soyle of the Isle, and for the doing thereof, and for the effecting thereof, taxed diverse Townes in the County of C. out of the Isle generally; that is, so much upon every Town. 2. questions.

1. If the Commissioners have power to make such new River?

2. If such a general tax be lawfull?

By the Common Law the King ought to defend the Realm, as well against the Sea, as Enemies, and provide that the Subjects may have safe passage over Bridges, and high-ways, and therefore if the Walls of the Sea, or Gutters be not scoured, he ought to award a Commission, to inquire of such defaults as by the Register amongst the Commissions of Oyer and Terminer. See there a president, 44 E. 3. for reparation of ancient Sewers, &c. or making them new, by the Statute of 6 H. 6. cap. 15, and divers others,

for making new Walls, &c. were only temporary and that power is omitted in the Act of 23 H. 8. cap. 5. which is made perpetual by 3 E. 6. cap. 8. and so the Commission in this point insueth the Commission which was at the Common Law; Therefore it was resolved, that the Commissioners in this Case could not make the said new River, because their Commission extends only to the reparation and new making of ancient Walls, Gutters, &c. And it would be hard to give power to Commissioners to try new inventions to charge the Country, which may never take effect: And it appeareth by the Register 252. that a new River ought not to be made, and the old stopped, without an *ad quod damnum*, and the Kings license; yet when a new Sewer is to be made, any small alteration for the publick good of such a place may be made; so of an ancient Wall against the rage of the water, in case of inevitable necessity, but by timely reparation that peril may be avoided, no other ought to be made: *Si assuetis moderi possis nova non sunt tentanda*: but if new inventions appear profitable, contribution must be voluntary, and not by compulsion, and in 3 Jacobi, Popham, Chief Justice, preferred a Bill in Parliament to make a new River in the Isle, but it was rejected.

2. Resolved, None ought to be taxed, but he who may have damage by the default, or profit by the reformation; also the assessment must be according to the quantity of their Lands, and number of Acres, and according to the rate of every mans profit and portion, and the taxation in general was not warranted, but it ought to have been in particular upon every owner or possessor, observing the said qualities. Some Statutes of Sewers are in *Defendendo & reparando wallias, &c.* Some in *destruendo & amovendo monumenta*, and some touching both.

*In the Court of VVards.**Scroops Case, 10 Iacobi, fol. 143.*

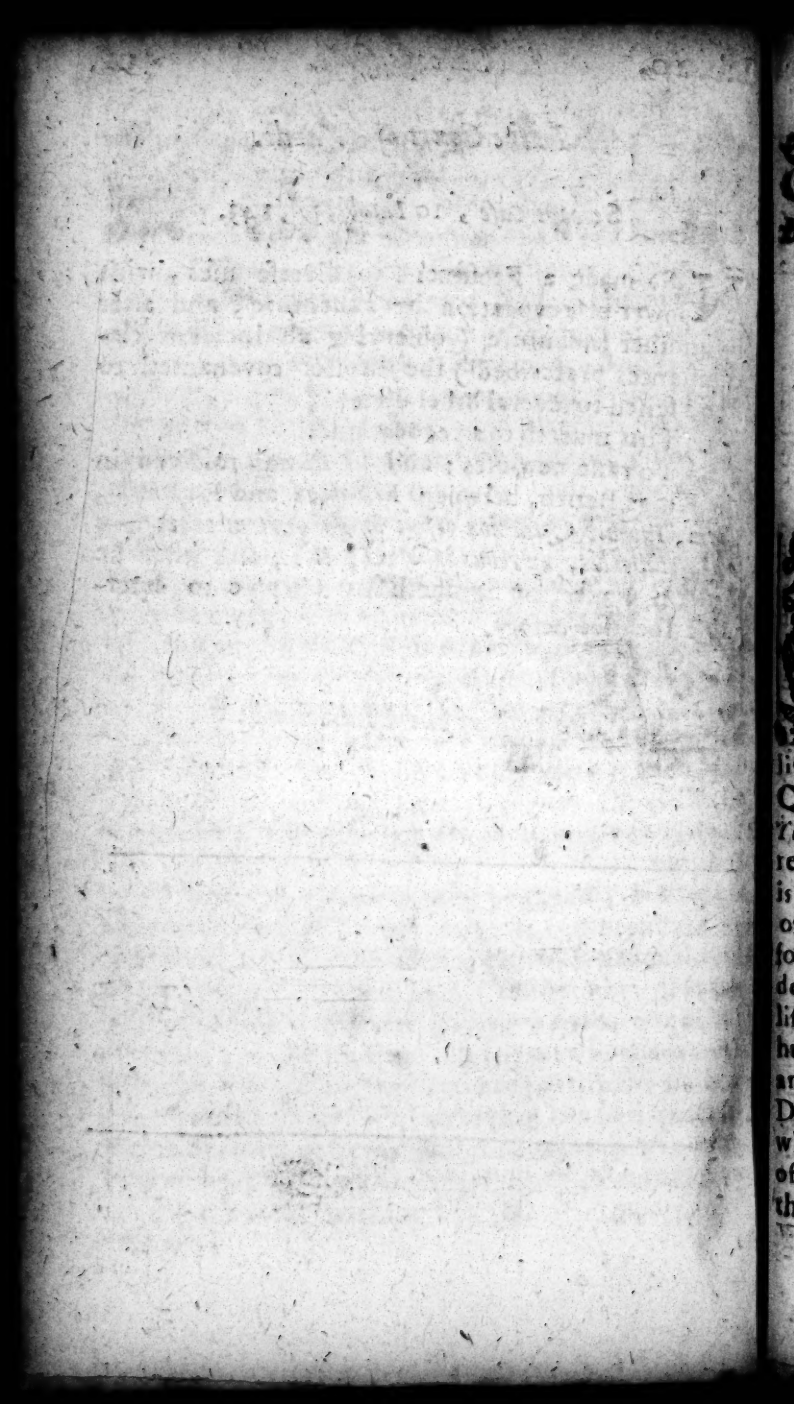
N. S. made a Feoffment to diverse uses, with power of revocation by Indenture, and after by another Indenture (observing all incident circumstances prescribed) the Feoffor covenanteth to stand seised to several other uses.

1. This inureth to a revocation.

2. To raise new uses: and so it was resolved in the Kings Bench, between *Frampton* and *Frampton*, Tr. 2. Iacobi. *Quia non refert an quis intentionem suam declaret verbis, an rebus ipsis vel factis*, and when he limits new uses, he signifieth his purpose to determine the uses before.

The End of the Tenth Book.

THE





THE ELEVENTH BOOK.

*The Lord de la VVares Case, 39. Eliz. in
Parliament, fol. 1.*

THOMAS *la Ware* great Grandfather of the now Lord in 3 H. 8. was summoned to the Parliament by Writ, and by 3 E. 6. it was enacted, that *william* the Father of the now Lord *Thomas* shall be disabled to claim any dignity, during his life, notwithstanding W. was called to Parliament by Q. *Elizabeth*, and sat as Puisne Lord, and dyed, and *Thomas* now Lord, sued in Parliament to the Q. to be restored to the place of his Great Grandfather, that is; betwixt the Lord *Barkly*, and the Lord *willoughby* of *Eresby*, and resolved, that he should be restored, for his Fathers disability was not absolute by attainder, but only temporary and personal, during his life, and the acceptance of the new Dignity shall not hurt the Petitioner, the Father being then disabled, and an Esquire only, so that when the old and new Dignity descend together, the old shall be preferred; which resolutions by the Judges was well approved of by the Lords Committees, and after confirmed by the Queen;

Auditor

Auditor Curles Case, 7. Iacobi. fol. 2.

Queen Elizabeth grants *Officium unius Auditorum Curie wardorum*, to W. T. and W. C. for life, & *eorum diutius viventi*, the K. grants it in reversion to I.C. & I.T. I.C. dyeth, the K. grants it in reversion to R.P. W.T. dyeth.

1. Resolved, the grant of the Office *unius Auditorum* &c. is good to two, and the survivor of them, for 3 H. 8. c. 46. maketh the two Auditors one Officer, and the word *unius* is not numerative, but denoteth the unity of the Office.

2. In such a grant the words & *eorum diutius viventi*, are not void, &c. for otherwise by the death of one of them, the interest of both would be ended; but now the survivor remains auditor, and another shall be added to him, and till another is added to him, his voice in Court is suspended, because by the Statute there must be two, so if the K. grant by a Patent to one, and by another to another, this is good, and until the second is added the first hath no voice in Court.

3. The Nomination of Auditors ought to be under the great Seal.

4. This Office cannot be granted in reversion.

1. Because it is judicial, and one cannot be ludge in *futuro*, and perhaps he was sufficient at the time of the grant, but not when it takes effect.

2. Although it be in part judicial, and in part ministerial, yet it is intire, and although ministerial Offices may be granted in *futuro*, yet this cannot, because it is inseparably judicial also, for the K. cannot grant the judicial part to one or two, and the ministerial to others.

3. If the grant be good, as to the ministerial part,

yet it shall not take effect now, because one of the ancient Officers is living, and if he should exercise the ministeriall part, with the survivor, there would be three Offices.

6. He who surviveth remains Auditor, yet had no voice in Court, untill the King add another to him.

6. The grant to P. is void.

1. Because in reversion.

2. Because it reciteth a void grant to I. C. and I. T. as good, and so the K. is deceived of his grant.

Sir John Heydons Case, 10. Jacobi. fol. 5.

Sir J. H. brings trespass against F. C. T. C. & I. C. F. C. appeareth, against whom the Plaintiff declareth, with *Simul cum, &c.* who pleads *Non culp.* so doth T. C. which issues were tried severally, and the issue between the Plaintiff and F. C. was first tried, and damages assessed to 200 l. and the other against T. C. 50 l. I. C. appears, and confesseth the Action, a Writ of inquiry of damages is awarded, but none issued, judgement for the Plaintiff, and affirmed in Error.

1. Resolved, in trespass against divers, who plead *Non cul.* or several pleas which are found in all for the Plaintiff, damages shall not be assessed severally, although one did more wrong than another, because the trespass is intire, and the Act of one, is the Act of all, but if they be found guilty at several times, they may, and if the Plaintiff confess the trespass to be at several times, the Writ shall abate.

2. If two trespassors plead severally, both shall be bound with the damages taxed by the first Jury, and the other shall have an attainr although he be a Stranger to the issue, because he is privy to the charge,

charge; if one of them after appearance make default, a Writ of enquiry shall be awarded to save a discontinuance, but none shall issue, because he shall be contributory to the damages taxed by the Jury, whh tryed the other issue, and the other shall not be charged in damages assessed, upon a Writ whereupon he can have no attainr, but if the other issue be found against the Plaintiff, then it shall issue.

3. Although there was a discontinuance against I. C. because in the common place; where the Action was brought, there is no continuance after a Writ of inquiry, (otherwise it is in the Kings Bench) yet it is aided by the Statute of 32 H. 8. c. 30.

4. If two Juries give a verdict at one time the Plaintiff shall have Judgement, *De melioribus damnis*, if he will; but *fiat nisi unica executio*, in respect against diverse who plead several pleas triable by the same Jury, if the Jury sever the damages, all is vicious.

Priddle and Nappers Case, 10 Jacobi, fol. 8.

THe Plaintiff in a prohibition declareth, that the Prior of M. was seised of 22 acres, and of a rectory time out of mind, &c. until the dissolution, &c. and so, for all that time held them discharged of Tithes, and conveys the said 22 acres from the King, to himself, and that the Defendant *Proprietarius rectorie predict.* sued the Plaintiff for Tithes, the Defendant traverseth the prescription of discharge; the Jury found that the Prior, time out of, &c. was seised of the said 22 acres, and of the advowson of the Rectory, and did appropriate it by License, 20 H. 8. the Incumbent then being living, who dyeth, and that the Prior held it united to the dissolution; judgement for the Plaintiff.

1. Resolved, although that every Church parochi-
all is supposed to be presentative, yet the Plaintiff
may plead, that the Prior, &c. time out of, &c. were
rectors of it, for this amounts to so much, that it was
appropriated, that he needs not shew how, because
before the time of memory, but the conclusion of the
prescription of unity. *Viz. Ratione cuius*, he was di-
charged of tithes was not good, for Land is not di-
charged of Tithes by unity, but of payment of them,
notwithstanding the mistaking of the Conclusion
both not vitiate the Count when the cause to have a
prohibition, is good.

2. The plea of the Defendant to have a prohibiti-
on, is not good, because he traverseth the conclusion,
viz. the Prescription of discharge, where he ought
to traverse the prescription of unity, for the conclu-
sion is not traversable, and because it is matter in
Law.

3. The issue is not well joyned.

1. The matter of discharge, is by reason of dis-
charge by the Statute, and the issue is by discharge
at the common Law.

2. In every issue there must be an affirmative and
a negative, but here is no affirmative, for the conclu-
sion is no affirmative, but an inference.

4. The impropriation is sufficient, although the
License were generall, and the incumbent living,
for it shall be construed in such a speciall sence, that
it may take effect, and the License is alwayes gene-
rall, for the incumbent may die or resigne, before
the impropriation.

5. Admitting the impropriation void it had not
been made good by 35. *Eliz. c. 3.* for this settles in
the K. all possessions of Abbeyes with qualification,
notwithstanding any defect in any surrender, &c.
which intireth the K. and this defect is not within
this.

the qualification, but if the impropriation had been good by reputation, and so used, this had been given by the Statutes of 27. & 31 H. 8.

6. If the Jury found matter to barr the Plaintiff, this is not to be regarded, because an attaineth not, nor the Witnesses punished for perjury, that matter not being materiall, to the issue.

7. Resolved, that perpetuall unity untill the dissolution is by the Statute, *Prima facie*, a discharge of payment of Tithes, except that the Farmors have paid tithes, and such an unity ought to be *Iustus, equalis*, that is, free in one, and other, *Perpetua & libera*, but if the Abby were founded in time of memory, he cannot at all, and here it appeareth that the impropriation was made in 20. H. 8. so that it appeareth to the Court, that before that the 20. acres were charged with Tithes, for of common right all Lands ought to pay Tithes; therefore the Chief Justice concluded, that the said 20. acres (as this Case is) were chargeable with Tithes, but in regard the information is good, and the plea *Pro consultatione habenda*, altogether insufficient, and the Verdict impertinent to the issue, they would not grant a consultation.

Doctor Grants Case, 11. Jacobi. Communi Banco.
fol. 15. In a Prohibition.

1. **R**ESolved, it is a good prescription that every Inhabitant in a Parish, have paid 2. s. in the pound, of the value of their Houses, *per annum*, in lieu of Tithes, because it may have a lawfull commencement, for it may be, that this was so time out of mind for the Lands, whereupon the Houses were built, as a *Modus decimandi*.

2. That

2. That the Parson may sue for it in the Court Christian, for that it is in the name of Tithes; and very ancient City and Burrough, had for the most part such a custome for their Houses, for the maintenance of their Parsons, and obventions include obventions, rents, or other revenues, and after a consultation was granted.

Sir Henry Nevills Case, 11 Jacobi, fol. 17.

It was resolved, that a customary Mannor may be holden of another Mannor, and there may be Lord, Measn, and Tenant of it, and such a customary Lord may hold Courts, and grant Copies, and such a Mannor shall pass by surrender and admittance, and fees shall be paid upon alienation or descent, and if the land be forfeited, the Lord shall have the services as annexed to the Mannor, so if a Tenant at will, &c. ad Copy-holders reserving Rent, this shall go with the Mannor, after the Will determined; and so note the difference between reservations at the Common Law, and by the custome of the Mannor. And it was said, that the Mannor of *Aylesham* in *Norfolk*, is holden by Copy, and others in divers other places: And judgement was affirmed in Error.

Doctor Ayries Case, 11 Jac. fol. 18.

14 E. 3. the K. licenced R. de E. to Found in Oxford a Hall, sub nomine aule Scholarium Regine de Oxonia, in the exemplification 8 Jac. it was Sub nomine Regine de Oxonia they present to the Church the name of preposit. Coll. Regine in Universitas, Socior. & Schollar. ejusdem, the Incumbent witheth the Rectory, and they by the name of preposit. Socior. & Schollar. Aula vel Collegii regine in Universitae

versitate Oxonii, confirm the demise; and notwithstanding these variances it was adjudged, that as well the confirmation as the presentation was good; and the sole doubtfull variance is, that it was *Aule Regine*, where it ought to be *Aule Scholarium Regine*, but good, for the true name of the College is so, for the word *Scholarium* it not necessary, but once, and if it be taken in construction to come after *Aule*, the provost will be the sole Corporation, by the name of *præposit. Aule Scholar. Regine*. Ergo, it doth precede in good construction. Also, the Founder named it so, and so it hath been alwaies taken, and if there be a small variance, this is not to the purpose, if it be so described that another cannot be meant, as a gift *Omnibus filiis I. S.* or *filie I. S.* when there is but one, or if *Richerus* Abbot of W. grant by the name of *Richardus*, Nil facit error. *nominis cum de corpore constat*, and this was the antient and constant Opinion in Case of Corporations. See the Case of the Maior and Burgeslies of Lin in the Tenth Book.

Henry Harpurs Case, 12 Jacobi, fol. 23.

In ejctiōne firme upon a Lease to J. W. in unam *capellam*, and Land in W. in the Parish of B. and Tithes, without shewing the certainty of them, the Visne was from B. the Case was, Sir H. B. seized of G. of the value of 30 *l. per annum*, and of N. of the annual value of 18 *l. in capite*, covenanted to stand seized to the use of him and his wife in tail, with remainders in tail, the reversion to himself, and after purchaseth Lands in Socage, and deviseth them to be sold by his Executors, the matter in Law resolved, but no judgement given, because diverse exceptions taken, &c.

1. *Resol.* That if Tenant of the King in *capite*, conveys

veys his Land to one of the uses, &c. and after purchase Socage, he may devise all the Socage.

2. A feck reversion upon an estate tail shall hinder the Devise of Socage Land for a third part.

3. Although the reversion in fee continue in him, yet he may devise two parts of the Socage, and all he had granted the reversion over.

4. Although he had exercised his power in making a Joynture of more than two parts, yet if the reversion in fee had not hindered, he might have devised all the Socage purchased after, howsoever the devise is good for two parts; for the reason reported in *Loveyes Case*.

5. Although the consideration of advancing his wife and their issues, extends not to the Brothers, yet the use is well raised to them, because the Law applyeth a consideration, and it is not to the purchase that they are found Brothers, because it appears in the Deed.

6. For the Mannor of G: the Estate tail vanishing by the death of Sir H. without the issue male, and therefore that estate is no cause to restrain the devise for any part, but the reversion in fee is for a third part: So resolved that the Plaintiff shall have judgement for two parts. Exceptions to the Count and Vifne.

1. The *Ejectione firme* is of Tithes, without shewing the kinds of them; *Ergo*, not good, for a certain judgement and execution cannot be made. 2. It may be that it is in a *modus decimandi*, for which an *Ejectione firme* lyeth not.

3. *Capella* is demanded, which ought to be demanded by the name of an house.

3. The *Venire facias*, is not well awarded, for it appears that there are two B. one a Ville, the other a Parish, and W. a Ville in the Parish of B, and the

Tithes are alleged to be in W. *in parochia de B.* so the Visne must be out of B. and W. because there is the most certainty; so that by reason of these exceptions, no judgement was entered, but it was said that the Courts of Wards, where a Bill depends for this matter, will take order for the possession accordingly.

Henry Pigots Case, 1 2 Jac. fol. 26.

B. W. brings debt upon Obligation made to him when he was Sheriff, omitting the name of his Office, but it was after interlined by a Stranger, the Defendant pleads *Non est factum*, without oyer of the Deed, and judgement was given for the Plaintiff.

1. When a Deed is rased, the Obligor may plead *Non est factum*.

2. If a Deed be rased by the Obligee himself in a place not material, it is void, but not if done by a stranger, except in a place materiall, and here it was in a place not material, because it appeareth not to the Court that he was Sheriff. If a Deed consist of divers parts whereof one doth not depend upon the other, and some of them are against Law, the Deed is good in part, but if any of them be rased it is void in all, so if the Seal of one be debrused all is void: See *Matthewsons Case* in the fifth Book.

*Alexander Powlters Case, 12 Jacobi,
fol. 29. distment.*

A. P. *felleo animo*, burned a House in *New Market*, whereby the greatest part of that Town was burned.

Resol. He shall not have his Clergy, for this was felony

felony by the Common Law, and so hainous, that he was not replevishable, no more than for Treason, as appears by *Westm. 1 cap. 15.* but he shall have his Clergy at the Common Law, for impediments to have Clergy, were first disability to be a member of holy Church, as a blind man, or woman.

2. Heretic.

3. Infidelity, as a Saracen or Jew, but a man excommunicated, or outlawed, shall have it.

5. Confession before the Statute of *Articuli Cleri*, 6. 15. because he cannot make his purgation.

6. High Treason or petit Treason before 25 E. 3. cap. 15. So of Sacrilege, and of *insidiatores viarum*, & *depopulatores agrorum*; See the Statute of 4 H. 4. cap. 2. but the statute of 23 H. 8. cap. 1. taketh away Clergy where one is found guilty of burning of Houses, but this is to be intended by verdict or confession; but if he stand mute, or challenge more than he ought, or be outlawed, these are out of the Statute, or if he commit Burglary, and not Robbery, he shall have his Clergy; by 25 H. 8. cap. 3. he who is found guilty of any of the said offences shall lose his Clergy; and if he stand mute, or challenge above his number, but that extends to the principal only in case of indictment, and not to the accessory before the fact, nor to appeals or approvements, nor to outlary; but these two Statutes were taken away by 1 E. 6. cap. 12. but 25 H. 8. was revived, by 5 & 6. cap. 10.

Obj. That the said Statute was not revived in all, but as to stealing of goods in one County, and flying into another, for so is the stile of the Act.

2. If it be revived, this takes not away Clergy, where one is found guilty by Verdict; but the Statute of 23 H. 8. which is not revived. But it was resolved that the Intire Act is revived.

1. Although that the statute of 5 E. 6. reciteth these offences solely, and reviveth the Act and Clergy, touching such offences, that shall be intended such in mischief, so *westminster*, 2 cap. 5. is expounded touching Infants having adyowsons, whether they be inward or not; and the style is not to the purpose, for many Statutes are of greater extent than the style, as 27 H. 8. of uses concerning Jointures; yet the preamble is of transferring uses into possession, also otherwise these words and every clause, &c. shall be surplusage, if it extend not to all the act, for there is but one clause in it which concerneth the offences in 5 & 6 E. 6. also it is that every Article concerning Clergy as to such offences shall be revived, and there is but one which concerns these offences; and many times penal statutes are taken by Equity, as 8 H. 6. cap. 12. ordaineth that the Imbezeling or withdrawing a Record, whereby a judgement may be reversed, shall be Felony, and by Equity, making of a bad judgement good, is Felony, so 25 E. 3. for killing of a Master extends to the Minors.

2. 25 H. 8. takes away Clergy, where one is found guilty by Verdict, because it takes away if he stand mute, or challenge, &c. in like manner as if he were guilty after the Laws of the Land, which are affirmative words: And 4 & 5 Phil. & Mary, cap. 4. takes away Clergy from the accessory before, which they would not have done if they had not thought that it was taken away from the principal by the other Act. By 18 Eliz. cap. 7. Clergy is taken away in case of Burglary, where he is found guilty by Verdict, Confession, or Outlary; but if he be indicted at the Common Law, and stand mute, or challenge over, &c. he shall have it, and not if he be indicted by 23 H. 8. or 5. E. 6. of Burglary, and put

put them who were in the House in fear with Robbery, or upon 1 E. 6. without Robbery: 4 & 5 Phil. & Mary, takes away Clergy where one is accessory before to a Robbery in a dwelling House; *Argo*, before that such an accessory shall have it: Breaking of an House in the night without Robbery is no Burglary, and if he doth rob he shall have his Clergy, if none were put in fear, or that any of the Family (and not a stranger) be not in another part of the House; but this was before 39 Eliz. cap. 5. whereby Clergy is taken away without putting any fear, if he rob any man of above the value of five shillings.

Accessory before in robbing a House in the day is ousted of Clergy by 4 & 5 Phil. & Mary. Accessory in robbing a Booth in the night or day, or out-House upon 39 Eliz. shall have his Clergy: *Note*, Although a Statute takes away Clergy from the principal, yet the accessory before or after, shall have it; and where by Statute or any offence a man is ousted of his Clergy, the Indictment must contain the offence, with the circumstances in the Statute: *Dyer*, 99 and 183. And A. P. was ordered to be hanged in Chains, &c.

Metcalfs Case, 12 Jac. fol. 38. In Accompt.

Judgment is given against M. *Quod computet & ideo in misericordia quia prius non computavit*; and before final judgement, Error is brought.

1. *Resol.* It lyeth not: 1. Because the Writ of Error saith, *Si iudicium inde redditum sit*, which shall be intended of the principal judgement, as the Feast of St. M. shall be intended the principal Feast, and the Feme shall be received upon default of her Ba-

ron after judgement of admeasurement before the principal judgement.

2. It shall be intended an entire judgment, therefore in action against two, if one plead to the issue, and the other confesseth, and judgment given against him, he shall not have error before the Ples determined against the other, for otherwise there would be a failer of right; for the Kings Bench cannot proceed upon the Record, nor the Common place, because it is removed.

3. The first judgement is not *ad grave damnum*, for by that he loseth nothing, but judgment of the arrears and damage is in the end of the original.

4. This is not properly a judgement, but an award of the Court, as ouster of aid, in *partitione facienda an awarde quod partitio fiat, &c.* which are but interlocutory, and not definitive.

5. They have day by the Roll until the last judgement; but if a Felon die after the exigent awarded, and before Attainder, a Writ of Error lyeth for necessity, for otherwise the goods are forfeited by awarding of the exigent without remedy; if divers are sued by several *Præcipes*, and judgement given against one, he shall have error before judgement given against the other, and if Error be in the original, the tenor only shall be certified, for otherwise the Court cannot proceed against the others.

2. It was resolved, That the Record is not removed, because untill finall judgement be given, the Chief Justice of the Common place hath no authority to send it, and they may proceed, notwithstanding the Roll be marked *Mittitur*.

Richard

Richard Godfreys Case, 12 Jacobi, fol. 42.

TWelve Chief pledges according to the custome of the Mannor, to represent to the Leet that every one of themselves ought to pay for themselves 10 s. *pro certo leta*, the Steward imposeth a Fine of 6 l. upon them, the Lord distreinerh for the Fine, and certaintey of Leet, one of the pledges brings Replevin, and judgement was given for the Plaintiff.

1. *Resol.* The fine is not well assessed, for it ought to be severall, and not joint as it is, because the offence is severall, and although that the offence be joint, yet the Fine shall be severall, as in disseisin and trespassse: But for the incertaintey of the persons, and infinitenesse of the number, many may be fined together, as the Town for the escape of a felon; and the reasonableness and excessiveness of the Fine shall be determined of the Judges: *Excessus in re qualibet jure reprobatur communi*, as excessive distress, excessive aid, and excessive amerciamment, are against the Common Law.

2. If the Fine be imposed erroneously, it may be avoided by Plea, for he had no other remedy.

3. The Lord cannot distrein, *pro certo leta*, without prescription, because it is against common right, but he may for a Fine or amerciamment; but for an amercement in a Court Baron, the Lord must prescribe; a Fine because it is assessed by the Court, needs not to be assayed, but an amercement must be assayed by the Country.

4. Admitting that he may distrein *pro certo leta*, he shall have a return, although he had no cause to distrein for the Fine, for where one brings an Action for two things, and it will not lie for one of them,

them, it shall abate only for that if he cannot have a better action for it, but if he may it shall abate for the whole; as in a *Formedon* of Land, and of an avowson, the Writ shall stand for the Land; so if a man avow for divers Rents arrear, and it appeareth, that parcel is not yet due, yet the avowry is good for the residue; but if a man bring a Writ of Entry in nature of an Affize of two Acres, where it appeareth that for one Acre he ought to have a Writ of entry in the *per*, there all shall abate, for this extends not to the action, but to the Writ only.

Richard Lifords Case, 12 Jac. fol. 46.

IN Trespass the Defendant pleads that J. L. was seized in fee, and demised to T. S. and M. P. (excepting Trees above 21 years growth, if not decayed) for their lives, and covenanted to stand seized *de tenementis prædictis cum pertinentiis superius dimissis*, to the use of R. L. in tail, &c. and the Defendant as Servant to the said R. L. entered and sold Trees; and judgement was given against the Plaintiff.

1. *Resol.* That the Trees notwithstanding the exception, remain parcel of the Inheritance, and are not Chattels, but shall descend to the Heir, for the Law doth not favour severance of the Trees from the Land, therefore if one bargain and sell Land, upon which there are Trees, they shall not passe without intollment

1. If there had not been such an exception, the general interests of them is in the Lessor; and the Lessee had but a particular interest in them, and the Lessor may sell them without license of the Lessee, so take effect after the Lease determined, and Times shall not be paid for them because they are parcel of

of the Inheritance. 2. By the exception of them, the Soil is not excepted, but only so much as surroundeth the Tree, and if he by license of the Lessee cut them up, the Lessee shall have the Soil, but by exception of Wood, the Land it self is excepted; if an Acre, or an advowson be severed from the Mannor by exception, upon a Lease for life, it shall not be parcel of the Mannor again; otherwise of Trees, for they were not severed *in facto*, because they grow out of the Land.

3. A thing in possession cannot be parcel of a reversion upon an estate for life, but Trees which grow out of the Land, and Fish or Deer in the Land may, and shall pass with it.

4. In this Case by grant of the reversion generally, of the Tenements, the Trees pass, for the Inheritance of all the Land passeth, and thereby the Trees annexed to it; the Disseisor by his entry shall have the Corn upon the ground, as well as the Grasse, by relation of continuance of possession, but this relation is not of effect to have a Trespasse against any, but the first Disseisor; for *in fictione juris semper equitas existit*, and the emblements shall be recovered in damages.

5. In the Case at Bar by exception of the Trees power is reserved to the lessor or his servants, to enter and shew the Trees to the Vendee: *Cuicunque aliquis quid concedit, concedere videtur & id, &c.*

6. The Plea in Bar is insufficient, for he sheweth that there was another Jointenant for life not named in the Writ, and demands judgement if action which is an apt conclusion.

2. The Plea is double, one to the Writ, another to the Action.

3. He pleads the entry of the lessees for life, which is surplusage.

4. He

4. He averreth not that the Trees which were sold were not Dotards which are excluded out of the exception, but that they, *de jure pertinebant* to R. L. which is not formal ; but upon all the matter here appeared sufficient cause to give judgement against the Plaintiff, and therefore by the rule of the Court, *Quarens nil capiat per billam.*

*The Case of the Taylors of Cloaths, &c. of Ipswich,
12 Jacobi, fol. 53.*

THe Taylors of I. make an Ordinance that none shall exercise the Trade in I. if he hath not been an Apprentice for seven years, and if he do not appear before them to be approved, upon forfeiture of five Marks, and for breach of it, bring debt; the Defendant pleads that he was retained by A. P. to be a domestick Servant, and that he made Garments by his command.

1. *Resol.* At the Common Law none may be prohibited to exercise any Trade, although he hath never been an Apprentice, and be ignorant; but if he misdoe any thing, an action of the Case lyeth.

2. This Ordinance for so much as is not prohibited by the Statute of 5 *Eliz.* is against Law, for after seven years Apprentiship he may exercise his Trade without allowance of any.

3. The Statute of 5 *Eliz.* doth not prohibite the private exercise of any Trade in a Family, therefore this is out of the said Ordinance.

4. The Statute of 19 *H. 7. cap. 7.* doth not corroborate any Ordinance against law, if it be allowed, but the allowance dischargeth the penalty of 40 l. for putting in use any Ordinances which are against the Prerogative of the King, or the common profit of the people; and judgement was given, *Quod quarens nil ceperent per billam.* Ed.

Edward Savells Case, 12 Jac. fol. 55.

AN *Ejectione firme* lyeth not of a Close, but it must be of a certain number of Acres, and the nature of them must be shewed; A writ shall not abate for want of Order. *Viz.* Of a House before Land, &c. and judgement was stayed.

Beathams Case, 12 Jac. fol. 56.

IF damages or costs are omitted, or not well assessed by the Jury, if the Plaintiff release them, he may have his judgement, and it shall not for that be reversed: Insufficient assessment of damages, and no assessing is all one.

Doctor Fosters Case, concerning Recusants,
12 Jacobi, fol. 56.

AN Information was preferred against a Recusant, by an Informer, *Tam pro domino Rege quam pro se ipso*, before the recusant was convicted for 220 l. that is 20 l. a Month for 11 Months absence from the Church, &c. And judgement given against the Defendant.

1. Resolved, that he may be convicted (to satisfy the Statute of 23 Eliz. in this same sure, and convicted shall be taken for attainted) for he shall forfeit nothing before judgement.

2. The Branch of distribution in the Act of 23 Eliz. extendeth as well to the Clause of penalty for recusancy, as to that of hearing or saying Masses, for it is all one to say, shall forfeit, and shall forfeit to the King.

3. Divers Acts of Parliament give the penalty to the

the King, and yet after make a contribution thereof to another who will sue, as 3 H. 6. cap. 3. & 3 H. 7. 3.

3. He against whom judgment is given, upon demurrer or default, or otherwise, is convicted with in the Statute, for he is attainted, which implyeth it, for it is so found by the Judges : so by the Statute of 8. H. 6. treble damages are given where a disseisin is found to be with force, this extends to judgement by *Nil dicit*, or default.

4. The Statute of 28 *Eliz.* doth not take away the Statute of 23. which giveth Liberty to the Informer, &c. for,

1. It is made for more speedy execution of it.

2. It doth not alter the sure of the party, but of the King, and leaveth the Informer as he was before.

3. The Act of 28 giveth not the penalty to any new person, for it was given to the K. by 23 *El.*

4. The Statute of 28 extends only to Indictments, and toucheth not informations.

5. The Defendant is not within 28 *Eliz.* if he be not convicted at the sure of the K. *Ergo*, this is left as before.

6. Because the Statute is in the affirmative, and they may stand together, but the Statute of 28 alters the Statute of 23 in this, that it confineth sues against Recusants in the K. Bench, or assizes, &c. which clause extends as well to the sure of the Informer, as of the Queen, and the Statute of 25 *Eliz.* & 3 *Jacobi*, enlarge the jurisdiction, as to the sures of the K. and touch not the sure of the party.

5. The statute of 35 taketh not away the Action popular given by 23. for it was made to give more speedy remedy, and not to take it away, a feme Covert is within the Statute of 23 and 1 *Eliz.* but before

fore the Statute 35 *Eliz.* if a Feme Covert had been indicted of Recusancy, the forfeiture should not have been levied of the goods of the Husband, because he was not party thereunto; otherwise in an Information or Debt brought by the Informer; and in that that the Statute of 35 is, that the K. shall recover all the pains &c. in such sort, &c. this alters the remedy only, as to the Queen, for now she may proceed by action, as for recovery of any other debt by the Common Law, in such manner as 1 H. 7. c. 1. giveth a Formedon against Parner of the profits, &c. also 35 *Eliz.* is in the affirmative, and although it giveth the penalty of 20 *l.* by the Month, yet it taketh not away 1 *Eliz.* which giveth 12 *d.* for every Sunday and Holy-day, and where this Statute saith, that the conviction shall be in the K. B. or at the Assizes, yet the Justices of Peace and others authorized by 23 may take Indictments: the Statute of 3 *Jacobi*, inflicteth imprisonment upon the Feme Covert, yet it taketh not away the forfeiture before: where a new person is designed by a new Statute, this taketh away the ancient Statute if they cannot stand together, and although there are exclusive words concerning Courts, yet the Court of K. Bench is not excluded, because it is *Coram Rege*.

6. A Recusant may plead *Auterfois convict*. or other collateral bar, as pardon, submission, &c. out of the Indictment, for 3 *Jacobi*, c. 4. extends only to defects, within the Indictment or other proceedings, & the Informer cannot charge any who is convicted before at the Sure of the Queen, upon 23 or 35. *El.* or 3 *Jac.* and upon 23 the Informer must sue within a year and a day.

Nota, if after a popular act commenced the K. Attorney will not prosecute, the Informer may for his part, and condemnation or acquittal at his sure, is a bar

bar against the K. and all others, yet the K. may pardon it before an Action commenced, and if the Informer dye, the Attorney may prosecute the sure, and the Information shall serve for the King.

The Case of the Masters and Fellows of Magdalen Colledge in Cambridge, 13 Jac. fol. 60.

DOCTOR K. Master of M. Colledge, and the Fellows 17 Eliz. grant to the Queen, reserving rent, upon condition to grant over, which is done accordingly, the Jury find 13 Eliz. of Deans and Chapters, and 13 Eliz. of confirmations, a fine with Proclamations is levied, and five years pass: Doctor K. dieth, the successor accepts the Rent, and within five years after his Election enters, and he and the Fellows demise to the Defendant. And judgement given for the Defendant.

1. Resolved, the Master and Fellows are restrained by the Statute of 13 Eliz. to grant to the Queen, for the Q. is a Person within the Letter of the statute, and if he should be exempted, this should be by construction of Law, which cannot be.

1. Because a general statute for maintenance of Religion and good literature, or relief of the poor, binds the K. although he be not named; and it appeareth by the Statute of 1 Eliz. that the K. is included within the words Person or Persons, for there he is exempted.

2. Because the Statute is made to suppress a torr, therefore the statute of *Donis* binds him.

3. A Statute made to perform the intent of the Donor binds the K. without being named, as the statute of *Donis*.

4. The Master and Fellows are disabled to grant, therefore the K. cannot purchase of them.

5. The

5. The intent is to be observed, which was to convey by the Queen to a Subject, and so to make her an Instrument of wrong, as one who holdeth of the Bishop grants to the Queen to regrant to a Corporation by Covin, to take away the Seignory of the Bishop by extinguishment, and to make an evasion out of the Statute of *Mortmain*, this Patent shall be repealed *Jure regio*, so here: and this act extends to a Corporation not incorporate by such names as are in the Statute.

2. The Statute of 18 *Eliz. c. 2.* doth not confirm this grant, for it is out of the words of the statutes, because it is not made upon consideration, and here the reversion of the rent is not considered, because the Queen was to grant it before the rent be due: grants to the K. may be void or voidable.

1. In respect of the Grantor, as if an Infant grant unto him.

2. In respect of the thing granted, as if a Foundation be granted.

3. In respect of the estate, as tail.

4. In respect of the grant, if it agree not with the rules of Law.

5. In respect of omission of any circumstance, as enrolment, this Statute aideth not grants of the first sort, for it doth not inable persons disabled by the Law to grant, as here, nor of the second sort, but confirmeth grants of Tenant in tail, because he was able to grant, but aids not grants of the fourth sort: for, *Que malo sunt inchoata principio vix est*, &c. but it aideth grants of the fifth sort.

3. At the time of the said Statute this grant needed no confirmation, because Doctor K. the Master was living.

3. The fine and Non-claim doth not bar them.

1. Because although it was not a conveyance made

by them, yet it was suffered by them within the words of the statute.

2. Doctor K. nor any in his time cannot make his claim, and claim was made within five years after his death.

4. Acceptance of the rent doth not bar them, because it is a body aggregate of many, and acceptance by the Master sole, doth not bar all, and the rather being without deed: And judgement given, *Quod querens nil caperet per billam.*

Lewis Bowles Case, 13 Jac. fol. 79. In Trover and Conversion.

T. B. Covenants to stand seised to the use of himself and his Wife for life, without impeachment of waste, the remainder to the first, second, and third Son, successively in tail, the remainder to the heirs of their two bodies, the remainder over, they have issue I. T. B. dies, the issue dies, the Wind bloweth down a Barn, parcel of, &c. and the Timber in the Count mentioned, was parcel of that Barn, the Feme carrieth the Timber out of the Mannor, he in remainder assigns by fine to the Plaintiff, the Feme dyeth, the Plaintiff brings an Action of trover and conversion against the Executors of the feme; and judgement given against the Plaintiff.

1. Resolved, untill the birth of the issue, T. B. and his Wife have an estate tail executed, but after that it is divided, and they have for life, the remainder to the issue in tail.

2. Tenant in Tail after possibility had a greater estate as to the quality, than Tenant for life: Therefore,

1. He shall not be punished for waste,

2. He

2. He shall not be compelled to attorn.
3. He shall not have aide.
4. Upon his alienation a *Consimili casu* lyeth not.
5. After his death intrusion lyeth not.
6. He may joyn the wife upon the mere right.
7. He shall not be named in an Action for, or against him, Tenant for life, but not as to the quantity, therefore his feoffment is a forfeiture, rescit lyeth upon his default, and exchange by him, and Tenant for life is good.
8. The Feme is not Tenant in tail after possibility, &c. for this must be a remainder of an estate by act of God, and not by limitation of the key; and though she be Tenant in tail after possibility of the remainder, this doth not extinguish the estate for life, because it is not a greater estate.
9. She shall have the privileges of Tenant in tail, after possibility, for the inheritance which was in her, and because she in Tenant is tail after possibility of the remainder, although she cannot claim it in possession.
10. If Tenant for life or years cut Trees, or proge Houses, the Lessor shall have the Trees and Timber, for the Lessee had them only as things annexed to the Land, and he shall not have a greater interest by his tortious severance, but he shall have a small interest in the Tymber blown down, to be sold again withall.
11. The Law giveth many privileges to a Mansion house.
12. The Lessee without impeachment of waste shall have the Trees which he cuts for without impeachment of waste, is as much as without demand for waste, otherwise it is, if it be without impeachment, by Writ of waste.
13. The privilege of without impeachment of waste

is annexed to the estate, therefore if he accept a confirmation of a greater estate, or assign over, it is gone.

9. If Trees are blown down with the wind, the Lessee without impeachment of waste shall have them; therefore judgement given, *Quod querens nil caperet per billam.*

The Case of Monopolies, 44 Eliz. fol. 84.

THE Queen grants to one of the privy Chamber, the sole making and importation of Cards, this Grant is void.

1. The grant of making of Cards is void: For

1. All Trades are for the publick good, for the exercise of Youth in labour, and therefore it cannot be appropriated to one solely.

2. A Monopoly had three incidents against the weal publick.

1. Raising of the price.

2. The Commodity is not so well made.

3. The impoverishing of poor Artificers.

3. The Q. is deceived in her grant, because she thought it to be for the publick good: It prohibits them who have skill to make Cards, and giveth license to one of the privy Chamber, who had not skill, and the K. cannot suppress Card-playing, because it is not *Malum in se*, and no trade may be prohibited but by Parliament.

2. The License of importation of Cards is void, being without limitation or stint, for the Q. may dispence with the Statute 3 E. 4. c. 4. which doth prohibit it, but that ought to be with limitation.

Nata. The K. that now is, in a Book Printed 1610. hath published that Monopolies are against law, and commanded no suter to presume to move

him for the granting of them : But admitting the grant good in the Case at bar, the Plaintiffs sole remedy had been that which 3 E. 4. in such case giveth, and that ought to be pursued ; and judgement entered, *Quod querens nil caperet per billam.*

The Earl of Devonshires Case, 4 Jac. fol. 89.

THE K. reciting that decayed Munition belongs to the Master of the Ordinance, grants it unto him, who sells it, and dyeth, his Executors are chargeable to the K.

1. Resolved this cannot be claimed as fees of the Office, because it was erected but in 3 H. 8.

2. The grant is void, because it was upon a suggestion, that it was due to him.

3. Although the Testator claims them to his own use, yet he shall be accountable to the K. for the Law will make a privity, as if any man taketh the K. goods, he shall be charged in an accompt, for the K. is not bound to charge any man as receiver, but generally, and otherwise the King may lose them by his death, and although the Kings goods came not to the hands of the Testator, yet he shall be charged if he were a means of the Kings damage and prejudice.

In Sir W. M. Case it was resolved, That no Officer of the K. can dispose of any part of the K. treasure, for the profit and honor of the K. without warrant under the great or privy Seal, and after the Executors satisfied the K. for the said Munition.

*James Baggs Case, 13 Jac. Banco Regis, fol. 93.
In restitution.*

1 **R**esolved, that to the Kings Bench authority belongs not only to correct errors in judicial proceedings, but other errors and misdemeanors extrajudicial, tending to the breach of the peace, or oppression of the Subject.

2. Causes of disfranchisement of a Citizen ought to be Acts against his duty and Oath, but words against a Chief Magistrate are not, but may be of the good behaviour, and so of an attempt without an act done.

3. A Citizen cannot be disfranchised without Charter or prescription, if he be not convicted by due course of law, as if he be attainted of forgery, perjury, or conspiracy at the K. Sure, or of any other crime whereby he becommeth infamous.

4. If a Citizen is disfranchised and hath a writ of restitution, and they return sufficient cause, which is false, a writ to restore him shall not be awarded but he may have a special action upon the Case.

5. Such a return ought to be certain, because the party cannot have an answer unto it, and after the court awarded a Writ to restore the said I. B. and so he was accordingly :

FINIS.



An Exact Alphabetical Table
of the Resolutions and matters
Contained in these Eleven
Books of Reports.

A

A ction of the Case where it lyeth for disparage- ing the Plaintiffs Title. pag. 17, 108, 109	
Age where a man shall not have it, although in as by descent.	7
Abeyance, see Remainder.	
Attornment by one Joyntenant only, where good, and where not.	39
Attornment what it is, and what act amounteth thereun- unto.	39, 40.
Averment in what cases it may be admitted.	44, 155.
	187. 208
Administration may be committed to the father or mo- ther as next of kin.	72
Advantage a man shall not have benefit thereby of his own wrong.	73
Acceptance of Rent by Lessor, having cause of entry, but no notice.	79
Acceptance of rent where it barreth a man of reentry.	80,
	81
Acquittance where it bars all arrearages due before.	81
Acquittance where a man is not bound to pay without it	ib.
Acceptance by whom and of whom a bar of arrears.	ib.
Acts legal mixt with fraud are tortious.	85
Averment of fraud may be taken by 27 El. & 13 El.	87

An Alphabetical Table.

Acceptance of collateral satisfaction no bar of right to a free hold.	95
Accord with satisfaction a good plea in personal actions, but not in real.	ib.
Agreement to Dower ad ostium Ecclesie, & ex assensu, &c. a good bar in Dower.	ib.
Actions of the case for slander from p. 101 to 111.	
Two things requisite to have an Action for slander.	107
Sermo relatus ad personam intelligi debet de conditione personæ.	105
Verba accipienda sunt in mitiori sensu.	110
Three Incidents to a Defamation in the Spiritual Court.	111
Appendant, what things may be to others, they must agree in quality.	112
Appeal, and Count therein where it is good.	115
What plea is a good Bar therein.	ib.
Appeal must be brought within a year after the death.	137
Action of assumpsit lyeth for a failer at the first day, but not debt.	163
Action of the case where it lyeth for negligencie.	176
Administrator during minority, may not sell goods but for necessity.	189
Administration by the Bishop where void, by the Archbishop only voidable.	ib.
Actions two depending for the same thing, where good, and where not.	205
Amends cannot be tendred after Cattel impounded, nor to the Bailiff.	212
Award must be certain, & between the parties only.	214
No assignee in Law, where there is an assignee in fact.	224
Arbitrement must be delivered to all the parties.	228
Action of the Case lyeth not for damage by Conyes, but be may kill them.	228
Ad-	

An Alphabetical Table.

Admiral what jurisdiction he hath.	230
Age where it is grantable.	241
Administrator sells goods, administration is repealed sale is good.	248
Acts transitory and local where they must be done in convenient time.	255
where they must be hastned by request.	ib.
Alibi, and the construction thereof in the grant of a rent charge.	258
Accord with satisfaction where it is a good plea.	ib.
Arrest, and the duty of the Officer therein.	261
Arrest, by a feigned action not lawfull.	262
Administration where general, and where special, diversity.	266
Attornment where requisite.	266
Attornment in law by one who cannot expressly attorn.	ib.
Action where it may be brought in either County at the election of the Plainciff.	273
Annuity granted to one and the heirs of his body, he hath not fee.	286
Act of Parliament, who must concur to the making thereof.	292
Action against an Inne-keeper for goods lost must have five Requisites.	293
Affizes, two manner of them at the Common-law.	296
In Affize of a new Office the profit thereof must be shewed.	296, 297
Attorney, where one may appear by him, and where not.	299
Accruer, four things requisite thereunto.	305
Authority is Countermandable, but then the bond is forfeited.	307
In actions real upon torte, one writ lyeth upon severall titles	308
In actions personal one may comprehend several torts.	ib.
Awards where well made.	312
	Au-

An Alphabetical Table.

<i>Audita querela, where it is maintainable.</i>	324
<i>Averrement of other uses where it may be made.</i>	331
<i>A voyry upon a mere stranger; what remedy for the terror destreined.</i>	334
<i>Authorities where they may be done by Attorney.</i>	348
<i>Accord, where it is a good Plea, and what requisite thereunto.</i>	349, 350
<i>Attornment, where it shall bind an Infant.</i>	351
<i>Action of the Case against Executors for the Testators debt good.</i>	352
<i>Administratrix, a Plea by her must be certain.</i>	358
<i>Avowries, four manner of them.</i>	367
<i>Attaint, where it lyeth by a stranger to the issue.</i>	413
<i>Action where it shall abate in part, and where for the whole.</i>	426
<i>Actions vi & armis, the body was subject to Imprisonment in them at the Common Law, and so in debt at the Kings sute.</i>	57
<i>Audita querela lyeth for the Heir before execution sued.</i>	58

B.

B <i>Ar of an Estate tail, although the remainder in the King.</i>	22
<i>If a Bankrupt grant goods after a Commission awarded, it is void.</i>	24
<i>What power the Commissioners have by the Statute of Eliz.</i>	ibid.
<i>That Act giveth benefit to such as will come in, and not to them that refuse.</i>	ib.
<i>The Bishop is Patron of all Prebends of common right.</i>	82
<i>Bishopricks donative by the King originally.</i>	ib.
<i>Burglacy what act amounts thereunto.</i>	135
<i>Burglariter, is vox artis, it cannot be otherwise expressed.</i>	ib.
<i>Bishop must shew the cause of refusing a Clerk.</i>	203

By

An Alphabetical Table.

By-Laws by Inhabitants were good without custome, and where not.	205
Consent of the greater part where it shall bind the rest.	ibid
By Law to imprison for not paying an assessment, is not good.	206
Bar in one Action when a bar in another, good diversities.	242, 243
Bill of Reviver upon a Bill of Reviver not suffered.	289
Barror who shall not be said to be.	294
Baron and feme Tenants in special tail, she is within H. 8. c. 28.	304
Bargain and sail, what words with consideration amounts thereunto.	310
Bar insufficient and where.	318
Bargain and sail by the heir after livery tendered is good.	329

C

Common recovery by tenant in tail bindeth both the remainder and reversion, and all leases, charges, &c. granted by either of them.	3
Condition of Perpetuity, repugnant, impossible, and against Law.	5
A Confirmation to feoff upon condition, doth not toll the condition, otherwise it is where no expresse condition is.	11
Contingency: See Lease.	
Covenant when certain, and when not, a diversity.	14
Course of every Court is at a Law.	22
Copihold by what act it is extinguished.	ibid.
Colledge or Religious House, where given to the King by 1 E. 6. or by 31 H. 8.	31
What act by the feoffor is a dispensation of the condition, and how long.	38
	what

An Alphabetical Table.

- what act by the Feoffee disableth him to perform a Condition.* ib.
- When this word Proviso maketh a condition, three things are to be observed.* 41
- No particular place appointed by Law in a Deed for a Condition:* ib.
- where by a fine a condition or rent is not taken away.* 43
- Covenant and agreement of the parties what power it hath.* ib.
- A Condition within what time it must be performed, and where it may be hastened by request; and where the feoffee hath time during his life; severall good diversities see there.* 44
- Chattels, as Obligations, &c. are forfeited by attainder or outlary.* 50
- Copyhold-estate for life is within 31 H. 8. of Monasteries.* 54
- Condition that the Lease shall be void, where it cannot be made good by acceptance.* 80
- corporation remaineth, notwithstanding a surrender of their Church.* 83
- Otherwise three Inconveniences would ensue.* 85
- Covin, the Author thereof shall not take advantage of it.* 87
- Consideration of nature is not good within 13. El. c. 8.* 89
- Copyhold-cases, and the learning thereof from p. 111 to* 129
- Their descent according to the Common-law, but not collateral qualities.* 112
- The Heir before admittance may take the profits, and surrender.* ib.
- Admittance of Tenant for life inures to him in remainder.* ib. p. 114.
- No Tenant by the courtesie of a Copyhold, without special custom.* 113
- If entailed by custom it may be discontinued.* ib.
- Sur.

An Alphabetical Table.

Surrender in fee by the husband or Tenant for life, no discontinuance or forfeiture.	ib.
Copihold, descent thereof doth not toll entry.	114
Copihold, possessio fratris may be thereof.	ib.
Copihold escheated granted in fee by tenant for life good.	115
Copiholder is in not only by the Lord, but by the custom paramount.	ib.
Disseisor may take admittances, but not voluntary grants.	ib. p. 116
Severance of the inheritance of the Copihold, what is wrought by it.	116, 117
The Surrender must be precisely presented, not so if error in the admittance.	117, 118
A Release to a Disseisor of Copihold, if good, and how.	118
Copihold is within 32 H. 8. of maintenance and Champerty.	ib.
Copiholder for a year may maintain an Ejectione firmæ.	ib.
Every manor comprehends in effect 2 several courts.	116
The Lord may admit out of the Mannor, the Steward cannot without a custom.	ib.
A Diversity where divers Copiholders, and where one only.	120
A Copihold forfeited by doing waste, & where not.	ib.
Three several copiholders and waste in one, what is forfeited.	120, 121
The Lord cannot exact unreasonable fines.	121
Copiholder if he deny to pay a fine certain presently, it is a forfeiture.	122
No fine due untill admittance.	ib.
Admittance must be made by the Lord according to the surrender.	122, 123
Sentence against the wife binds the husband not party.	ib.
Surrender without limittng any estate is but for life without a custom.	124

An Alphabetical Table.

A man may surrender to the use of his wife.	ib.
Presentment or admittance after death, where it is good.	ib.
The Lord may retein a Steward or Bailiff by Paroll.	125
who may retein a Steward for the King, and what power he hath.	ib.
Tenant in Dower of Copihold by custome shall have all Incidents.	126
what things are grantable by Copy.	ib.
what Acts are destructions of Copiholds.	127
Copiholder how he ought to alledge the custom.	128
Custom, and prescription, and their diversity.	ib.
Common appendant, the original thereof at the common Law.	133
It is appendant only to arable, and for oxen, horses, kine, and Sheep, &c.	ib.
It may be appendant to a Mannor or Carve of Land.	133
It may be apportioned, so cannot common appurtenant, where it is extinct by unity of possession.	ib.
Coroner of the County, and Verge, their distinct power.	141, 142
Corporations, and the manner of elections, and how they must be made.	157
Covenants and warrants, express and in Law, and when broken.	159
Chanteries where given to the King by 1 E. 6. see at large.	164, 165
Condition where it may be apportioned, and where not.	167, 168
Excambium or Exchange, and what it importeth.	168
Exchange by eviction of part, all is defeated.	ib.
where an assignee, named or not named, shall be liable to a Covenant.	177, 178, 194
Concessi or Demissi where they import a covenant, and who shall take advantage.	179
Covenants collateral &c not within 32 H. 8. c. 24.	ib.

An Alphebetical Table.

- If one Covenantor only break a covenant all covenantees must joyn, otherwise when several interests pass. 180
- Covenantee himself cannot devise the assurance. 180
- Counsel of assurance must be given to the Purchaser. 181
- Condition of Covenant once broken, where it may be salved after. 181, 182
- Condition of two parts both possible, and one becomes impossible by the act of God, the Obligor is freed from the other. 182
- Covenant to make estate at the costs of the Covenantor. 182
- The seal of one Covenantor broken, it is void against him only, if the Covenants be several, otherwise if they be joint. 182, 183
- Condition to save harmless, terror of sure is a damnification. 183, 184
- A Common Recovery not like other recoveries, it may be of an avowson. 195
- It may be de annuali reditu five pensione in the disjunctive. ib.
- A Constat must be upon Affidavit, and where it is suable. 201
- A Constable may bring an offender to what Justice he pleaseth, and upon refusal to find surety, may commit him without a new warrant. 203
- A Confirmation of the land, and of the Term, a good diversity. 215
- Customs of Lands for debts upon contract, and where it binds strangers. ib. & 216
- A Custom which addeth more solemnity to the common law, is good. 216
- Corn to whom it belongeth. 216, 217
- Conditions where they must be truly and not covenantly performed. 224
- Corn sowed by the Feme durante, if she marry, the Lord shall

An Alphabetical Table.

shall have it, but not upon a divorce.	233
Courts Inferior, as Hundred Court-Leet, &c. and who are Judges there.	244
Citation, and an Appeal, and their diversity.	248
Courts of Record shall be intended the Courts at Westminster propter Excellentiam.	249
Condition in an Intail not to suffer a common recovery, is void.	258
Collation where it putteth a man out of possession.	260
Common cannot be claimed ratione Commorantiz, but a way may.	263
Collusion within Marlebridge, c. 6. what conveyance shall be.	268
Common called Shacke in N. is good.	274
Condition precedent and subsequent, a good difference.	277
Condition inseparable where given to the King.	278
Certificates, which are traversable, and which not.	279
Consideration may be averred, which stands with the Deed.	297
Covenant in consideration of money, must be enrolled.	ib.
Copiholder in by the custom parambunt.	300
Condition of accruer, to what things it may be annexed.	305
Common appurtenant destroyed by purchase of part of the land in which, &c.	306
Condition not broken by a disturbance by paroll.	310
Court made good by the Bar, and that by Replication in circumstances only.	316
Custom may make a thing good, which a charter cannot.	316
Composition no more accompted administred, than what	

An Alphabetical Table.

what was paid.	318
Commoner in a Forest, where he may inclose by 22 E. 4. c. 7.	319
Collusion where averrable to defraud the King of Wardship.	326
Causa causans, and Causa causata.	340
Conspiracy, where punishable before acquittal; and before execution.	342
Commissioners to examine, &c. their duty, demeanour, and authority.	346, 347
Consideration, what words amount thereunto.	354
Copihold is within 4 H. 7. of fines, 356. And much good matter upon that Statute.	357
Commoner therof may have an action of the case for the loss of his Common.	358, 359
Confirmations, three manners thereof.	369
Common Recovery, where a barr of the reversion.	375
Corporation may make a surrender in Law, but not in fact.	381, 382
Colour, what it is, and where it must be given.	388
Costs only, and where costs and damages also shall be recovered. Nom. differ.	399, 400
From what time they may be recovered.	400
Corporations, a difference between old and new in matter of Misnomer.	401, 418
Commissioners of Sewers, and their authority in taxes and otherwise.	406, 407
clergy, where allowable at the common Law, and where at this day.	421, 422
Corporation, what ordinances they may make.	428
Colleges, what grants by them to the King are good by 13 or 18 Eliz.	432, 433
Citizen, for what cause he may be disfranchised. and for what not.	438. ibid.
Contribution against a purchaser, where grantable.	58
Charges real, as warranties, do not survive, but personal	

An Alphabetical Table. 1

sonal doe.

ibid.

D.

Tenant for life, and he in remainder in tail, joyn in a fine, or feoffment, it is no discontinuance nor forfeiture.

A man may be in as by descent, and yet shall not have his age, or be in ward.

A disseisor may make admittances to Copiholds, but not voluntary grants.

The Date of a Deed is not of the substance thereof.

The things requisite to the essence of a Deed.

A Deed made by menace is voidable by plea.

Demise by baron and feme without saying by Deed, good.

Donee in tail, where he shall hold of no body.

Debt, where it lieth before the last day of payment, a good diversity.

where it lieth against a lessee after assignment.

Debt against an Executor after assignment.

Debt by the lessor against the lessee, or his assignee.

Deed, where the second delivery shall be good, and relate to the former.

A Devise to two in tail equally to be divided, they are tenants in common.

Descents, good matter thereof, & of possessio frarris.

Debt by the lessor for rent lieth after a Re-entry.

Distress for rent where it affirmeth the Lease.

Dean & Chapter are to assist the Bish. in two things.

A Deed within the proviso of 13 Eliz. must be upon good consideration, and bona fide.

Directions how to make a Deed by one indebted to others.

A Deed how to be made by an unthrift to preserve his estate.

Dower

An Alphabetical Table.

Dower : see Agreement.	
Distress not excessive for homage, fealty, esnage.	98
Debt for arrearages of an annuity in fee continuing.	143
Debt upon a puiſne Judgement payable before Statutes.	148
Dispensation to hold a Plurality when duely taken.	158
Detinue for goods delivered and phylloined, where it lies; a good difference.	160, 161.
Declaration, and the office thereof.	192
Demurrer is a confession of all matters in fact well pleaded.	208
Dagges and Pistols are within 33 H. 8. c. 6. of Cross-bowes.	209
A Deed shewed in Court remains there all that Term.	211
It may be entred in hæc verba the same Term, but not after.	212
Divorce, Issue after it by a second husband, if legitimate.	225
Demurrer, the Plaintiffs cannot refuse to joyn, but the King may.	228
Dove-house, none may erect it but the Lord of the Mannor.	ibid.
Antient demesne a good plea in Ejectment, but not in Trespas, It is extendable upon a Statute by Elegit.	229
Deodands, what they are, and they must be found of record.	231.
Debt, where the defendant may plead non est factum.	235
Defeasance sufficient to defeat a Statute executed.	245
Devise to J. S. paying 20 s. he hath fee-simple; A diversity.	246
A Devise to baron and feme, and their children, what estate it is.	247
Debts which are within 33 H. 8. c. 39.	280, 281.
Demand of a rent service, and rent charge, when to be made;	3

An Alphabetical Table.

made; a difference.	284
Discontinuance of Proces upon 1 E. 6. and what is revived by general Resummons, and what by special Resummons.	284
Sutes depending in inferiour Courts are out of 1 E. 6.	
If one plead to an Inditement, and the King die, he must plead de novo, but if he be convicted, Judgement may be in the time of another King.	285
A Dignity may be intailed, and forfeited also by a condition in Law.	286
Divorce, sentence thereof being in force the issue before is a bastard.	288
Such sentence may be repealed after the death of the parties, but no divorce can be after their death.	288
Devise of a rent out of all the Capite lands, good out of two parts.	307
Devise of land good, which cannot be by act executed.	311
Debt is not extinct by making the debtor Administrator, otherwise if Executor.	319
In Dower a Common Essoin allowed.	332
who therein may plead deteinment of Charters.	333
Distresse for damage feasant void if the Cartel be chased out.	334
Deed, what act is a good delivery thereof.	367
Devise of a Term for life, remainder for life.	376.
good; The first Devise cannot bar him in remainder: Assent to the first devise an assent for all: not grantable over; but it may be extinguished by release to the first devisee.	ibid.
Damages, where they may be intirely assessed, and where not.	403, 404
Disability absolute, and temporary or personal: A difference.	411
Damage, where the Jury may assess them severally.	413
Devise	

An Alphabetical Table.

Devise of Socage in Capite, where it is good. 419
 Damages not well assessed, yet the Plaintiff shall have
 Judgement. 429
 Debts, what remedy for them at the Common Law, and
 when the body and lands became liable to satisfy
 them. 57

E.

Evidences, to whom the Custody of them doth belong
 by Law. p2. 1.
 Estate void as to one, and good to another by Parlia-
 ment, or by act in Law. 6
 Estate intire ought to be defeated by a condition or li-
 mitation. 6
 when a man may enter or claim nothing, vesteth til en-
 try or claim. 7
 Execution hath retrospect to the recovery, being the ori-
 ginal act. 7
 Any thing executory created by deed by consent of par-
 ties may be nullified. 8
 Estate to one and his heirs for the life of B. is but for
 life. 11
 A. for money demiseth, and selleth for years to B. the
 Deed is inrolled. B. hath election to take by the com-
 mon law, or by bargain and sale by 27 H. 8. without
 attornment. 27
 where nothing passeth before Election, and where it must
 be in the life of the parties. ibid.
 Much learning of Elections, and to whom the power
 thereof is given. 27, 28
 Estate of freehold cannot commence in futuro. 35
 Essopepells by matter of record, and who shall take ad-
 vantage thereof. 36
 Error where a Record is well removed, notwithstan-
 ding a Variance. 49

An Alphabetical Table.

Error or right of action not given to the King by 28 H. 8.	ibid.
Error for him in remainder upon a Tail, where and how it lyeth.	51
Estate, where it may be waived in pails at the common law, and where by 27 H. 8. of uses.	64, 65
Escape, what act by a prisoner amounts thereunto.	73
Escape by a prisoner, he may be taken again upon fresh sute.	75
In Escape where the Plaintiff may have a new Cap. and Sur. and where he may charge the Sheriff with the Escape, at his Election.	75, 76
Entry given to the issue, who disaboth himself, and dies, if his issue may enter.	78
Escape in Law, although the party remain in prison.	82
No escape between the death of the old and making a new Sheriff.	ibid.
Escape where no fresh sute is necessary.	ibid.
Entry lawfull where after sixty years.	100
Essoyns bind all parties and privies in estate and interest.	146
where they ought to be found by the Jury.	147
They continue no longer than the estate.	148
Execution by a Serjeant at Mace, good within Westminster 20. 18. although he be not sworn to take the Inquisition as the Sheriff is.	152
Execution where good without Scire facias, or without return.	153
Execution, how long it shall continue.	ibid.
Estovers appendant by grantor, &c. when destroyed, and when not.	161, 162
Exception of wood, excepteth the soil also.	174
Exception for years, and for life, a difference.	179
Executor, an infant, where he may release, and where not.	188
He may release before probate, but not have an action.	ib.

Exc-

An Alphabetical Table.

- Executor must pay a Judgement in debt, before a Statute.** 188, 189
- Executor at 17 years of age may administer.** 189
- Executor of his own wrong cannot retine.** 190
- what acts done by him stand good.** ibid.
- Executor where he must sue, or be sued by action in the debt, and where by detinet.** 190
- Executors waste goods what return the Sheriff must make.** 191
- Executor cannot bring debt as Administrator.** ib.
- Executor of his own wrong, by what act a man becomes meth so.** ib.
- Executor how far he is liable to be charged.** 192
- Error, none shall assign it, except it be to his disadvantage.** 194, 195
- Exemplification when pleadable by 13 Eliz. 201. It is the same as Inspeximus, & the difference between them and an Innocescimus or Vidimus.** ib.
- Execution, and Cases thereof, from 217. to 229.** ib.
- One in execution escapeth, yet the other is liable.** 218
- where one in execution for the King, may be also for the Plaintiff.** 219
- A man in execution needs to be arrested again at anothers sute.** 220
- Execution is good, although the writ be not returned; where, and where not.** ibid.
- Estrepmēt lyeth in waste as well before Judgement as after.** 233
- Executors within the benefit of divers Statutes, although not named.** 270
- Extent against issue in tail, or his alienee by the King within 33 H. 8. where good.** 281
- Estate tail may be without the words (of the body of)** 288
- Error lyeth after a Retraxit, but not after a Disclaimer.** 299

An Alphabetical Table.

Excommunication, who ought to certifie it, and how it must be done. 302

(Et) where it maketh a Disjunctive. 307

A man in execution escapeth, the Judgement is reversed, no action against the Sheriff. 320. but if execution be against the Sheriff before that, it stands good. 320, 321

Errors in a Record where amendable, and where not : much good matter. 324, 325

Ten Errors not yet remedied. 326

Exec. when one refuseth, & when all, a difference. 337

They cannot sue before probate. 338

Evidence where the Deed must be shewed; and where a copy sufficeth. 388, 389

Ejectione firmæ for tithes, the kinds must be shewed, 419, 429

Error lieth not before the final Judgement. 423

Exception of trees, yet they doe remain parcel of the inheritance. 426

Errors three moved, but not resolved. 58

F

Forfeiture by what act of Tenant for life, and where he comes in as vouchée. P. 2.

Tenant for life remainder in tail, infeoffs the reversioner, it is a forfeiture; otherwise if to the immediate remainder, or reversioner. 10

Every fee-simple may be charged one way or other. 12

A feoffment of a messuage cum pertinentiis, what passeth thereby. 25

Disseisee levieth a fine to A. the Disseisor shall take advantage of it. 36

A woman accepts a fine, and renders back for 1000 years, it is within 11 H. 7. 75

A fine levied by Corvyn by a Termor or Copiholder, bars not

An Alphabetical Table.

not the Lord.	85
Fraud, six marks thereof.	88
A fraudulent Deed avoidable only by a purchaser for money.	90
A fine after Proclamations, barreth the issue, although he claim, bring a formedon, he beyond the Seas, or an Infant, because he is privy.	94
Proclamations serve only to distinguish it from a fine at Common Law.	ibid.
A fine hath five parts, and which they be.	194
A fraudulent Deed avoidable by a purchaser, notwithstanding notice.	304. 267
Fraud, where it may be given in evidence.	ibid.
Fraud within 11 H. 6. c. 12. Every assignee is within that Act.	213
Free-hold estate cannot commence in futuro.	223
Fine is a bar of a Lease for years within 4 H. 7. c. 24.	236
Fine for Alienation, where it is due.	253
Fine levied by the King, where it bars the tail.	285
Fine for a Contempt, who may assign it, and what remedy for it.	294. 295
The difference between it and an amercement.	295
Formedon where it lieth upon two distinct gifts.	308
Therein a man must make himself heir to the party last seized.	309
Fully administred, pleaded, and assents found for part, what Judgement.	318
Franchises, where they must have allowance.	335
where prescription lyeth for them: what privileges are extinct if they return to the Crown, and what not.	ibid.
Feme Covert if within West. 2. c. 35.	347
Fraud, allegation thereof may be general.	358
Feme Covert, where she must be examined upon a writ in Court.	374
	Free-

An Alphabetical Table.

Free-hold only descendable. 390
Fine by a Steward of a Mannor where well assessed,
and where the Lord may distrain for it without pre-
scription. 425

G.

Grant of the King : see King.
Grant in tail by the King, where good. P. 3
Ex gratia speciali, &c. of what force in the Kings
grants, ibid.

Grant of a common person.

A gift to two & hæredibus is void. 6

A Grant by a Termor for so many years as shall be behind
tempore mortis suæ, it is void, otherwise if for a
certain number of years. 13

Grantee enters by vertue of a void grant, he is a dis-
seisor, otherwise if good at the commencement, but
if wants its perfection, then tenant at will. 35

Things which lie in grant are effectual by delivery of
the Deed only. 23

The King grants all those lands situate in D. and they
lie in S. it is void. 26

What Grants of the King are holpen by 34 H. 8. ibid.

Gardians, and their feints. 70

Grant of the King where void without special words.

Grants of the King how to be expounded. 131

Goods delivered : see Detinue, 160

Grant of an Interest cannot be joynt and several, but a

power may. 180

Grantor cannot derogate from his own grant. 185. 321

Goods waived, and goods of felons. 231

Grant of a Copibold by Dean and Chapter for 3. lives,

is good by 13 El. c. 1. 257

Gardian may avoid a voidable Lease, but the Lord by

cf.

An Alphabetical Table.

eschere cannot.	276
How long such avoidance shall endure.	ibid.
Grant, the first certainty in it false, and where it con- tra.	56
where made good by (ex gratia speciali, or by) a non obstanre.	ibid. and p. 132
Grant of the King after office, and before the return, good.	292
void, because a false consideration.	214
Of a Tenancy estreated, the mesnalty is thereby revi- ved.	242
A grant of lands Tenendum by a Rose, Pro omnibus serviciis, is Socage in chief.	ibid.
Grant by him good, if he be not deceived.	262
Lease by him without recital, where good.	274
Grant of a Stewardship, without naming the County where it lieth.	339
Grant of a Mannor, what appendants now pass with- out naming.	381

H.

A Man cannot have an heir so long as he liveth.	p. 4.
An Habendum repugnant to the premises where it is void, a difference.	23, 24
Habendum, and the office thereof.	35
Heir apparent, to whom the custody of him belongeth.	68, 69
The custody of him belongeth to the Mother within	4.
2 & 5. Phil. & Mar. Jure Naturæ.	69
Heir female shall not forfeit the double value.	266
Heir male where he shall forfeit the double value.	268
Hue and Cry and Cases thereof upon 13 Eliz. 1. and 27 Eliz.	275
Heir of a Copiholder beyond the Seas where barred.	312
Heriot custom by purchase of part is not extinct.	314

Heir

An Alphabetical Table.

Heir Knighted in the life of the Father, tenders livery,
the mean rates are saved. 429
Hospital, what things requisite to the founding thereof. 371

I.

Infant where bound by the warrant of his ancestor:
Nom. different. 10511

Ignorantia facti excuseth, but not Ignorantia Juris. 119

An Estate is three, and to the heirs of one of them, the
Jointure remaineth. 38

Otherwise if to 3. for life, & one purchase the fee. ib.

One Jointenant may preiudice another in the personalty,
but not in the realty. 39

Intent and common usage are to be respected in com-
mon Assurances. 43

Jointure, what estate is one within 27 H. 8. 95

It must begin presently after the death of the Husband. ibid.

Jointure, where it may be waved. ibid.

A devise to the wife for life, or in tail, &c. if a good
Jointure. 97

Indictments and Appeals, and much good matter from
P. 135. to P. 143.

Principal & accessory, both absent at the felony done. 140

Auterfoits acquit, where it is a good plea. ibid.

Infant admitted by his Gardian, and no record made of
it, is good. 148

Inrollm. to what purposes it relateth to the delivery. 154

Institution and Induction, and the effects and differ-
ence of them. 158

Joint words shall be taken severally in six respects. 173

Indent, void without a manual act of Indenting. 181.

Interest where assignable over. 185

An Alphabetical Table.

- Indentures to lead the uses of a fine subsequent, are only
 directory, and bind not the estate of the Land.* 186
Jeofails and amendment of Records, from 192. to 198
*In trespass the nature of the Fishes must be shewed, for
 it is the matter of substance, and so not aided by 18*
El. c. 14. 192
*Debt against baron and feme in the detinet tantum,
 is not aided.* 193
*Ejectment of Lands in A. B. and C. the writ must be
 out of them all.* ibid.
*23 Jurors returned, and 12 appear and find for the
 Plaintiff, it is good by 18 El.* ibid.
*Variance between the writ and Count in the name, is not
 remembered.* ibid.
*Pannel of a Jury annexed to the Venire facias, with-
 out return it is vitious.* 195
*A difference where a man is misnamed in the Venire,
 and where in the Pannel.* 196
*A Juror misnamed in the Venire, but not in the Di-
 stringas and postea, is not good.* ibid.
*Issue joyned upon a point not material after verdict is
 remedied.* ibid.
Record amended after the transcript removed. 196, 197
*Error in the Original is matter of substance, and not re-
 medied.* 197
*A writ of Covenant dated after the return, amendable
 in a fine, but not in other actions.* 197
A Common recovery made good by collateral intendment 197, 198
Jeofails and Statutes thereof extend to Wales. 199
*Inhabitant who is to be liable towards reparations of a
 Church.* 207
Imparlances to plead in bar are entred, but not to reply. 211
*Judgment final given in Wales, upon default of the de-
 mandant, but not upon default of the tenant, but*

An Alphabetical Table.

a petit cape, shall issue	217
Indicement certainly to a certain intent in general is sufficient.	235
It shall not be quashed for false latine.	ibid.
Percussit must be in it, except in case of poisoning.	236
Journeys accounts where grantable.	243
Judgement in debt in force is a barr of a new action.	259
Infant, where his inheritance may be lost by usurpation	260
Incumbent shall not be removed, if not named in the writ.	260
Judgement in debt bindeth the estate of a joinevant releasor.	269
Infant makes a feoffment and dieth without heir, the Lord shall not have it, if livery be made with his own hands, otherwise if by Letter of Attourney.	295,
	296
De injuria sua propria where a good plea, and where not.	301, 302
Judgement for the P'laintiff although his title destroyed.	310
Inrolment not necessary where a chattel only passeth.	311
Improvement of the revenue shall be wholly employed to the same charitable uses.	317
Indenture subsequent may direct uses in a precedent recovery.	331
Inditements, variety of good matter, as also the duty of a Sergeant.	344, 345
Judgement de melioribus damnis where the Plaintiff shall have it.	414
Issue must consist of an affirmative, and a negative.	145
Impropriation good in the life of the Incumbent.	ibid.

An Alphabetical Table.

K.

T He King by his Proclamation may make forain Coin current.	232
His Supremacy in Causes Ecclesiastical,	237, 238
The word King includeth all his Successors.	253
He may be dispossessed of an Advowson, but not of the inheritance thereof.	254
He may be barred of a transitory title only.	283
what Statutes binds him, and what not.	285
He cannot grant the penalty of a Statute to a Subject.	286
He hath three manner of inheritances grantable in him.	298
His Charter how it shall be expounded: good matter.	298
His Patent good one way or other.	327
He shall have his third part out of the whole.	330
Release by him extinguissheth not service inseparable.	361
where he shall have mean rates, but no premier seisin.	365
Kings bench about 4 E. 5. became resident.	383
King, where lands shall be said to be concealed from him.	398
Grants to him where void, and where voidable.	433
In his case the Law maker, a privy to be accountable unto him.	437
where lands shall be in him without a scire facias, or seisure by 33 H. 8. c. 20.	56

L.

A Lease cannot commence upon a double contingency.

An Alphabetical Table.

A Lease by the King under the Exchequer seal is good. 22

A Lessee leaseth parcel for years, if Livery be made in that parcel it will passe, otherwise of a Lease at will of parcel. 25

A Lease for 3. lives by a feme wherewith, 11 H. 7. 74

who may take advantage by entry within that Act. ibid.

Lessee for years what interest he hath in the trees. 150

If a house fall by tempest, the Lessee may take timber to re-edify it, but otherwise it is if the Lessee suffer the house to fall. ibid.

Lessor shall have timber trees blown down, but the Lessee shall have Dotards. 151

A Lease to begin from henceforth, and delivered after, when it beginneib. 171

A Lease where good by a Bishop, by 1 Eliz. 171

A Lease to A. during the life of B. & C. how long it lasteib. 173

A difference therein between a limitation and condition. 174

A Lease at will by what act determined. ibid.

Lessee for Lands where he may dig for coals : a difference. 175

A Lease to A. for his life, and the lives of B. & C. is a Lease for three lives ib.

Leases made to the Q. by Colleges, Deans, &c. are restrained by 13 Eliz. c. 10. 177

Libel it may be against a private person. 236

Non refert, whether it be true, or the party be of good fame. ib.

Libel if it be found, what is to be done. 237

Libel how many ways it may be made. ib. & 343
Lease

An Alphabetical Table.

Lease by tentant for life, and him in remainder, how it shall inure.	246.
Livery of seisin what act amounteth thereunto.	252.
A Lease must have a certain beginning and continuance	256
License pleaded without shewing the Deed, is good.	257
Latin and the severall sorts thereof.	404
Lease without impeachment of waste, and what passeth thereby.	235

M.

A Man illiterate is not bound to seal a Deed without hearing it read, if he require it so, otherwise if not required.	P. 19, 21.
Marshalsea, of what actions it holdeth plea.	249
Mannor, how destroyed, and how not, and how created.	265
Mulier puisne barred by the death bastard of eigne, where and where not.	313
Melius Inquirendum, if the first be good no other shall issue.	328
Murder by the event, what act amounteth thereunto.	351
Mesnalty suspended in part and in Esse for part: where it may be.	366
Marshalsea, and the jurisdiction thereof.	382, 383
Mannor customary may be holden of another Mannor.	417
Mesnager of a Corporation, where it doth vitiate.	418
Monopoly is against the Law, and hath 3 Incidents against the weal-publique.	436

N.

Notice where material and issuable.	P. 79
Nemo debet bis puniri pro uno delicto.	138
Hb	No.

An Alphabetical Table.

Notice, where it must be taken by the Patron, and where not.	156, 158
where it must be taken by the Devisee, and where not.	160
Non compos mentis, what acts done by him are avoidable.	169
Four sorts of them, and who shall have the custody of a non compos.	169, 170
Nuisance, where one man shall have an action for it.	210
where a Quod permittat lyeth for it before request, and where not.	227
And where against a feoffee or an assignee.	ibid.
Notice of lapse where it ought to be special.	254
A Nobleman cannot be arrested for debt.	261
Nobility by descent, and by marriage, a diversity.	ib.
Name of reputation where it is sufficient.	265, 266
Nullum tempus occurrit Regi, how to be understood.	283
Notice where it is requisite, and where not.	310
Nuisance, where it must be shewed.	341
The Plaintiff may abate it.	ibid.
what act amounteth thereunto.	343
Non est factum, where it is a good plea.	420
A good diversity.	ibid.

O.

O Riginal act must be respected.	P. 7, 47
Original writ when it shall be said to be depending.	198
Office of instruction, (but not of Intitling) good by the Exchequer Seal.	201
If it have matter of substance, it is good.	202
An Orphane cannot sue for goods in the Court Christi-	210.
an.	Outb

An Alphabetical Table.

<i>Oath of leageance more by reason of the Kings politique Capacity, than of his Person : Error of the Spencers.</i>	273
<i>Offices of Sheriffs end by the death of the King, and when not.</i>	285
<i>Office where repugnant.</i>	327
<i>To what severall times it shall have relation : A difference.</i>	328.
<i>Ordinary and his power to grant administration.</i>	338,
	339
<i>Office where forfeited by Non user, and where not.</i>	340
<i>where an action of the Case, or assize lyeth of it at Election.</i>	343
<i>where grantable for years, and by what acts forfeited.</i>	355, 356
<i>Granted by a Bishop where good by i Eliz. and where not.</i>	380, 381
<i>Office of Auditor granted to two, where it is good.</i>	412
<i>If grantable in reversion.</i>	ibid.
<i>Office of Master of the Ordinance, and what fees belong therunto.</i>	437.

P.

P <i>erpetuities their Original and Authors.</i>	6
<i>Power of revocation extinct by feoffment.</i>	8
<i>Priority of operation in Instanti.</i>	16
<i>A power to make Leases, where good.</i>	17
<i>Pleading in the affirmative and negative, differ.</i>	19, 20
<i>Possession of the House, is a good possession of the Lands also, notwithstanding a feoffment thereof.</i>	25
<i>Possibility where it shall make a grant good.</i>	33
<i>Premises, and the office thereof.</i>	35
<i>Proviso, where a qualification, and no Condition.</i>	42

An Alphabetical Table.

<i>Paying in a will where a Condition, and where it is a limitation.</i>	57
<i>Privities, three sorts of them.</i>	61
<i>Pardons and Cases thereof.</i>	198
<i>Pardon of an Amercement.</i>	199
<i>Dibts due to the Queen are excepted, but not if originally due to the Subject.</i>	199
<i>General Pardon taken beneficially for the Subject, and strong against the King.</i>	ibid.
<i>Pardon of corporal punishment, where the King may do it.</i>	199, 200
<i>Where the King may pardon a sute in the Court Christian, and where not, but costs he cannot.</i>	ibid.
<i>Prescription for common, where good.</i>	214
<i>Property altered by sale in a Market overt, and where not.</i>	256
<i>Power executed, becomes irrevocable.</i>	220, 221
<i>Perjury where within 5 Eliz.</i>	225
<i>Presentment of meré laicus serves for a Turn, but not if the admission, &c. be merely void.</i>	227
<i>Prescription for what things is good.</i>	231
<i>Payment of parcel before the day, is a good satisfaction for the whole.</i>	234
<i>Paroll, where it shall demur at the prayer of the Demandant or Tenant.</i>	240
<i>Partition by Joint-tenants cannot be by word.</i>	244
<i>Partition, where the warranty is destroyed by it. ib.</i>	ib.
<i>Parson deprived for adultery, is pardoned, he is thereby restored.</i>	245
<i>Place, if material, the issue cannot be found elsewhere.</i>	259
<i>Prescription by Tenant for life, years, &c. must be in the name of him that hath fee.</i>	263
<i>Prescription and custom, the diversity.</i>	264
<i>Presentment within six months, must be according to the Kalender.</i>	264
	Pre-

An Alphabetical Table.

<i>Preſtripeion Pro certo Letz is good.</i>	269
<i>Postnatus, why he ought to be answered, six reasons.</i>	271
<i>Privities, three manner of them.</i>	295
<i>Power to make Leases, where well pursued: a good diversity.</i>	303
<i>Physicians College, their Censors power by 14 H.8. and 1 Mar.</i>	314
<i>Perjury, where not punishable.</i>	416
<i>Prescriptian for tithes of houses where good.</i>	ib.
<i>Parcel of a Reversion what may be.</i>	427
<i>Purchasor, bona fide, before action brought, shall not be subject to charges.</i>	

Q.

Q uod ab initio non valet tractu temporis non convalescit.	P. 35
Q uod partes finis nihil habuerunt, where averrable.	91, 92.
<i>The Queen is a person exempted, and may grant without the King.</i>	114, 115
Q uare impedit; where it may be without naming the Patron.	282
<i>In a Q.J. Non-sute after apparance is peremptory, but not if it abate for default of form or Misnosmer.</i>	283
Q ui destruit medium destruit finem.	
Q uare Impedit Præsentate ad medietatem Ecclesie: good.	405

R.

A Remainder. contingent destroyed by the feoffment of tenant for life.	P. 4
H b 3	A

An Alphabetical Table.

<i>A Remainder Contingent when it must vest.</i>	<i>ibid.</i>
<i>A Remainder in Abeyance bound by a warrant.</i>	<i>ibid.</i>
<i>A Revocation may be made, part at one time, and part at another.</i>	15
<i>A power of Revocation may be extinct by fine, or may be released.</i>	16
<i>Right may be forfeited by a fine.</i>	35
<i>A Remainder to the right Heirs of the Conisor, is a reversion.</i>	45
<i>Recovery erroneous in force barreth the remainder, and where not.</i>	50
<i>Remitter where and what requisite therunto.</i>	<i>ib.</i>
<i>Render to the wife only voidable, where she is not party.</i>	52
<i>Recovery against the baron sole, barreth not the remainder.</i>	<i>ibid.</i>
<i>Recovery by Estoppel how it worketh.</i>	50, 52
<i>Remainders in contingency, where good.</i>	59
<i>Relations, and much good learning touching them.</i>	68, 69
<i>Repleader cannot be after a Demurrer.</i>	76
<i>Recovery by Tenant in tail, whose mother releaseth with warranty, is not within 11 H. 7. Otherwise if the wife had released after the death of the issue.</i>	77, 78.
<i>Rebutter, where it may be, and where not.</i>	77
<i>Rescous of a distress by the Tenant, if nothing be arrear.</i>	100
<i>Rent and arrerages thereof 32 H. 8. c. 37. giveth remedy only where the arrerages are due, and become remediless by the act of God.</i>	144
<i>Roll amended according to the special verdict.</i>	146
<i>Recognizance to the Chamberlain, and his successors, is good by the custom.</i>	152
<i>Records import verity, and shall be tryed by themselves.</i>	154, 155.
	<i>Rent</i>

An Alphabetical Table.

Rent must be demanded at the place limited, although out of the Land. 155.	And although there be no words of demand; not so in the Kings Case. ib.
Rent must be paid at the Exchequer upon a Lease by the King.	ibid.
If no place be appointed, the Law appoints the Land.	156
Reteiner of Chaplains by a Countess within 21 H. 8.	when good. 162, 166, 167
Rent what shall be said to be the true and ancient rent.	172
Release to be given by a A. to B. as the Judge of, &c.	shall direct, A. must procure him, otherwise if such as the obligee should devise. 183
Rents reserved, where several and where joint.	202
Release of things before the day of performance, where good, and e contra.	209
Restitution where made after reversal of outlawry or Judgement,	221
Release by one Plaintiff barreth only himself.	224
Rent reserved to one and his heirs, or to one or his heirs, all one.	232
Rent charge arrears thereof must be paid by him in remainder by 32 H. 8.	234
Resident where a Parson must be, and what is a good excuse thereof.	250
Release of one Plaintiff where it barreth the rest, and where not.	252
Revocation of uses where it is well done, and where not.	256
Rent paid by a Termor, giveth no seisin to have an as- size.	262
Rent may issue out of one acre, and other liable to distress.	281
Rent may be seek and charge at several times.	282
Rent granted to two with clause of distress to one,	

An Alphabetical Table.

is seek.	ib.
Rent extinct in Esse to some purposes.	287
Retraxit must be in proper person; and a writ of Error lyeth after it.	299
Replication evill, and yet the Plaintiff shall have judgement; where, and where not.	318
Repeal of administration, and the force thereof.	319
Release of all Actions, quarrels, suits, Right, &c. what passeth by it.	323
What words amounteth to it.	341
Recusant, how disabled to grant an advowson by 3 Jac.	378
Reservation, the proper place is after limitation of the estate.	397
Rent, which is the legal time of payment thereof.	402
Payment thereof satisfactory where it is, and where it is not.	ibid.
Reservation in the Disjunctive, and where with a Condition added: a difference.	403
Rent not payable the last quarter, in what Case.	402
Recusancy, and the Statutes concerning them expounded at large.	429, 430, 431
Rent, acceptance thereof where it doth bar, and where not,	434

S.

Statute of 23 H.8. extends not to suppress good uses.	P. 2.
Tenant for life joins in a feoffment with him in remainder without Deed, it is a surrender of Tenant for life, and feoffment of the remainder.	5
Tenant for life grants to the Reversioner, and a stranger, a surrender for the moiety.	38
Statutes, excellent Rules for the interpretation of them.	54
	Sta-

An Alphabetical Table.

Statutes, which of them extend to Copibold, and which not.	ib.
Sheriff is not bound to bring a prisoner in recta linea.	73
Old Sheriff must give notice to the new of all executions.	82
But if the old Sheriff die, the new must take notice.	ib.
Statute of 4 H. 7. construed by the Judges against the Letter.	85
Statutes against fraud liberally expounded.	88
Seisin of fealty, is a seisin of all other services.	98
Seisin of a superior service, a seisin of inferior.	ib.
Seisin of all services superior and inferior by doing homage.	ib.
Seisin of one annual service, is not seisin of another.	98, 99
Seisin in Law, sufficient for Avowry, but not to have assize.	99
To what services or writs 32 H. 8. doth not extend.	ib. 100
Statutes which concern the King, must be taken notice of by the Judges.	101
Sheriff, what things are incident to his office.	129, 130
Suspension of a Condition or rent.	146
Sheriff how he must sell a term upon a fieri facias.	156
A private Statute must be pleaded.	171
A Surrender by acceptance of a new Lease.	175
Sheriff where he may break a house to do execution, 222, and in such case a house is no defence for Strangers.	ib.
Sewers, Commissioners thereof, & their power.	225, 226
Sheriff may take posse comitatus in an Estrepmenr.	233
Services where they shall be multiplied, apportioned or extinct.	239, 398
	Sheriff

An Alphabetical Table.

Sheriff must not dispute the authority of the Court.	261
Seisin of a Rent who may give it.	263
Swans wild in a common River, may be seised for the King.	276
A Swan-mark must be by grant of the King, or by prescription.	ib.
Cignets, how they must be divided.	ib.
He who hath a Swan-mark must have five marks per annum, by 22 E. 4.	ib.
A Swan may be an estray, but so can no other fowl.	280
Seisin of a Rent, where it needs not to be alleged within forty years.	300
Services where they shall be multiplied, and where extinct.	313
Sale of Chattel after Judgement is good, but not after Execution.	329
Surrender of a Copihold by Letter of Attorney, good.	348
Sheriff, what Obligations made to him are good by 23 H. 6. and what not.	391, 392
Forma verbalis, & forma legalis, or essentialis.	392
	393

T.

I F Tenant in tail suffer a recovery and die, execution may be sued against the issue.	7
Terminus Annorum & Tempus Annorum, and their difference.	13
At the common Law none had capacity to take tithes, but spiritual persons, or the King, (except in special cases) for a lay-man had no remedy for them till 32 H. 8.	29
A spiritual person may prescribe at the common Law to be discharged of tithes.	ib.
	Bc-

An Alphabetical Table.

Before the Council of Laterane, a man might pay his tithes, to any Priest.	ib.
How a man may prescribe to have tithes as appurtenant to a Mannor.	30
Tithes do not issue out of Lands.	32
Tenant in tail, he in remainder in tail grants for his own life, void.	33
Otherwise of a grant of a reversion, for he may have services.	ib.
Tender upon a condition where it shall deuest an estate.	34
One wounded at Sea, dieth at Land, the murderer cannot be tried.	46
A Translation by the King of a Priory into a Dean and Chapter is good by 25 H. 8.	83
Tenant for years ousted shall not hold over, but Tenant by Elegit shall.	160
Tender of money in Bagges, is a good tender.	233
Tender by the Lord is not requisite to have the single value.	237
Tenure: see Grant of the King.	
Trial must be where the Land lyeth, and not where the Patent is dated.	246
Traverse of the Lease and not of the seisin of the Lessor.	251
Traverse of the second assignment, where not requisite.	259
Trial here of a thing done beyond the Seas, where it is good.	260
Tenant by the Courtesie, where a man shall be, and where not.	293, 294
Tale barred, the Reversion being in the Crown, where.	306
Trespassor, ab initio, what act maketh a man so.	321
Tender of sufficient amends for damage feasant, when good, when not.	323
Tar-	

An Alphabetical Table.

- Traverse*, where it must be of the Tenure, and where of the Seisin. 336
- Trial of a Baron of Scotland by Commons of England*: good matter. 359, 360
- Tayle*, by what words created, 363. not descendable: 368. Barred without recompence. 374
- Tenure revived*, preferred before the creation of a new. 364
- Tales*, where it ought to be granted by 33 H. 8. c. 6. good matter. 396, 397
- Traverse of the conclusion* where it may be. 415
- Trade lawfull to exercise any at the Common-law*: 428 and what adulteration is made therein by the Statute of 5 Eliz. ibid.
- Tenant in tail after possibility* hath a greater estate in quality, than *Tenant for life*, but not in quantity: 434, 435. and what privileges do belong thereunto. ib.

V.

- V**Se had is void, but the conveyance good. p. 2
- Any man may give Lands to a charitable use. 2
- what is good policy in any such feoffment. ib.
- uses future contingent, destroyed by the feoffment of the feoffees tenants for life. 9
- 27 H. 8. doth not transfer the possession to any use, but only to uses in Esse. ib.
- 27 H. 8. shall not be taken by equity. 10
- uses not agreeable to Law, 27 H. 8. executeth not. 10
- uses antient may be revoked, and new raised by one and the same conveyance. 16
- uses where they may be raised upon general consideration, and by what conveyance. 17
- what considerations are good to raise an use. 21
- unity in what manner dischargeth uses. 32
- An

An Alphabetical Table.

36	An use of the wives land, declared only by the husband,	
nd	when it bindeth, and when not.	36
60	One use declared by the husband, and another by the	
e	wife, they are both void.	ibid.
74	Variant in part, where it avoideth the whole limitati-	
w.	on.	37
64	use followeth the state, and vesteth accordingly.	37
6.	Voucher of the husband only where it barreth.	53
97	Verdict good by Inditement.	56 & 153
15	Ubi non est principalis, non est accessorius.	138
28	Usury what contract amounts thereunto.	208
ute	Utterque, taken sometimes Discretive, sometimes Col-	
id.	lective.	228
in	Visne must be from the most certain place.	245
34,	Verdict, perfect or imperfect must stand untill a Venire	
ib.	facias de novo be awarded.	301
	Vi & armis, where good in writs, and where not.	340
	Verdict insufficient, shall not be supplied by a writ of	
	Inquiry, and where it may.	401
3	Uses revoked, and new limited, by what Act.	409
2	Unity, a discharge of payment of tithes, it must have	
ib.	four requisites.	416

W.

ib.	W arranty, what words make it general.	p. I
10	In wills the intent to be observed.	60
not.	Wills much learning, and what inheritances are devi-	
10	sable by 32, 34 H. 8.	64, 65
one	Will countermanded by marriage.	149
16	Waste in what things it may be committed.	151
71-	Wager of Law where it lyeth.	163
17	Warranty special, what Lands shall be recovered in it.	
21		268
32	Waste promissive, not actionable, but voluntary waste	
du	is.	176
		Waste

An Alphabetical Table.

<i>Waste lyeth not after the death of the wife against the Baron.</i>	211
<i>It lyeth against Tenant for life after the death of him in remainder.</i>	212
<i>warranty where it commenceth by disseisin.</i>	214, 215
<i>Wreck, excellent matter of it.</i>	229
<i>will, where directory, and where declaratory, without reference to power.</i>	247
<i>wardship of the Daughter, where the Father shall have it.</i>	250
<i>wardship, infra annos nobiles.</i>	ibid.
<i>will, to the making thereof a perfect and disposing memory necessary.</i>	151
<i>No wardship if the heir be knighted in the life of his ancestor.</i>	68
<i>wills, good resolutions upon 32 H. 8. of wills.</i>	268
<i>warranty intire, and barreth all upon whom it descends.</i>	297
<i>will it inureth by way of executory devise.</i>	311
<i>No wardship, if no heir.</i>	327
<i>wager of Law, where.</i>	353
<i>wardship by 32 H. 8. where.</i>	362, 366
<i>wardship vested, shall not be divested by the King.</i>	390
<i>wardship; but not primer seisin of a fruitless reversion.</i>	365
<i>wills 32. & 34 H. 8. largely debated and expounded.</i>	384, 386
<i>warranty cannot enlarge an estate.</i>	390
<i>where it may be given in evidence.</i>	391
<i>writ where it shall abate by death of one of the Plaintiffs, and where not.</i>	404
<i>Writ of Enquiry, when issuable.</i>	414

FINIS.

the
211
n in
212
215
229
out
247
ave
50
vid.
ing
51
an-
68
68
ds.
97
11
27
53
66
90
sl-
65
ed.
86
90
91
in-
04
14



